OIA compliance and practice in the Ministry of Justice - Te Tāhū o te Ture

Opinion of the Chief Ombudsman June 2022

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# Background

In 2015 my predecessor, Dame Beverley Wakem, carried out an investigation to:

* examine the attitudes, policies, practices and procedures adopted by government agencies generally, in order to establish how well they were complying with the requirements of the OIA;
* identify good practices, areas of weakness or vulnerability and practices that could give rise to non-compliance; and
* recommend improvements where needed.

As it was not practicable to examine in detail the practices of all government agencies subject to the Ombudsman’s jurisdiction, twelve government agencies were selected to investigate as being representative of central government agencies.[[1]](#footnote-2) All 12 agencies were provided with individual reports and although these reports were not published, the agencies were provided with action points which, if implemented, would lead to improvements in OIA practice. A further 75 agencies and 27 Ministers’ offices subject to the OIA were invited to provide information via a survey.

The resulting report titled Not a Game of Hide and Seek, was published in December 2015.

In December 2019, I decided that it was timely to revisit the 12 representative agencies involved in *Not a Game of Hide and Seek*, by initiating a follow up investigation to determine the current state of OIA practice and culture in these central government agencies.

# Introduction

This report sets out my opinion on how well The Ministry of Justice - Te Tāhū o te Ture (Te Tāhū) is meeting its obligations under the Official Information Act 1982 (OIA).

My investigation has included consideration of Te Tāhū’s supporting administrative structures, leadership and culture, processes and practices, including information management, public participation, and proactive release of information to the extent that these relate to achieving the purposes of the OIA.

The purposes of the OIA are to increase the availability of information to the people of New Zealand in order to:

* enable effective participation in the making and administration of laws and policies; and
* promote the accountability of Ministers of the Crown and officials,

thereby enhancing respect for the law and promoting the good government of New Zealand.

The OIA also protects official information to the extent consistent with the public interest and the need to protect personal privacy.

As Chief Ombudsman, I am committed to ensuring official information is increasingly available and not unlawfully refused and to improving public sector capability in terms of decision making. Key to achieving this is Parliament’s expectation that I regularly review the OIA practices and capabilities of public sector agencies.

I have initiated this practice investigation using my power under the Ombudsmen Act 1975 (OA). This provides me with the tools needed to investigate matters I consider important to improve administrative decision making across the public sector.[[2]](#footnote-3)

I have considered the information gathered through my investigation against an assessment framework consisting of the following five areas:

* Leadership and culture;
* Organisation structure, staffing and capability;
* Internal policies, procedures and resources;
* Current practices; and
* Performance monitoring and learning.

# The impact of COVID-19

My investigation coincided with an unprecedented event, the emergence of COVID-19 and the resulting nationwide state of emergency. From 26 March to 13 May 2020, New Zealand was at Alert Levels 4 and 3, during which time individuals who were not deemed essential workers were instructed to stay home under a nationwide lockdown (*the 2020 lockdown*).[[3]](#footnote-4)

The 2020 lockdown enacted in response to the COVID-19 pandemic has caused people across New Zealand, including in the public sector, to adapt to working differently – away from their office; remote from colleagues; and accessing work information from their homes.

While information gathering for my investigation commenced before the 2020 lockdown, I had an opportunity and a responsibility to extend my investigation and consider how agencies’ existing official information practices enabled them to adapt to the challenges presented by the 2020 lockdown, and to maintain compliance with official information obligations. By reporting my findings, my intention is to highlight good practices, identify any vulnerabilities and lift overall official information practices across the public sector, including by recommending where agencies ought to improve their current arrangements to enable them to maintain resilience and compliance should a pandemic or natural disaster occur at some point in the future.

A key aspect of my information gathering involved seeking information from the agency via a questionnaire, and seeking information from staff via an online survey before the 2020 lockdown. I extended my investigation to include consideration of agencies’ practices during the 2020 lockdown. After the 2020 lockdown, I asked agencies to complete another questionnaire, and staff to complete another survey. For clarity, I have outlined below how I will refer to these throughout my report:

* A questionnaire sent to agencies in late 2019 seeking information about policies, procedures and practices (I will refer to this throughout my report as ‘my initial questionnaire’).
* A questionnaire sent to agencies in mid-2020 seeking information about policies, procedures and practices *during the 2020 lockdown* (I will refer to this throughout my report as ‘my post-lockdown questionnaire’).
* A survey of staff in late-2019 seeking their views about culture, policies, practices and procedures (I will refer to this throughout my report as ‘my initial survey’).
* A survey of staff in late-2020 seeking their views about culture, policies, practices and procedures *during the 2020 lockdown* (I will refer to this throughout my report as ‘my post-lockdown survey’).

## My opinion

Through the investigation process, I have identified areas of good practice, and areas of vulnerability that I think Te Tāhū should address. My opinion relates only to Te Tāhū’s practice during the period in which my investigation took place.[[4]](#footnote-5) I notified the Chief Executive of the commencement of my investigation on 19 November 2019.

I have identified a number of things that are going well for Te Tāhū. I am impressed by the increasingly open culture, and the messaging the Chief Executive has provided to staff on the importance of openness. Other highlights for Te Tāhū include a new ‘mixed’ (or more centralised) model of OIA processing and increased staff numbers processing OIA requests. Te Tāhū has improved its OIA webpage and generally has good OIA guidance and training.

Prior to confirming my opinion, I provided the opportunity for Te Tāhū to review and comment on my provisional findings.

I have made one recommendation and suggested 28 actions that I consider will improve Te Tāhū’s practices. My recommendation relates to Te Tāhū’s guidance to agencies on their Directory of Official Information entries. It is my opinion that Te Tāhū has acted unreasonably by failing to fulfil its role as administrator and steward of the OIA in respect of:

• providing guidance to agencies to facilitate their compliance with their statutory responsibility under section 20(3) of the OIA, and

* its obligation under section 20(4) of the OIA to ‘have regard…to the need to assist members of the public to obtain official information’.

I recommend that Te Tāhū, with input from my Office and within 12 months, develop and issue guidance for agencies on the type of information that should be included in the Directory of Official Information that will assist requesters to make effective, targeted OIA requests to agencies. In addition, it should develop and implement a plan, with input from my Office, to address the omissions of agency entries from the Directory, and improve accessibility and usability.

In its response to my provisional opinion Te Tāhū indicated that it accepted my recommendation. It also outlined some steps it is already taking to improve the Directory.

I have also made a finding in relation to Te Tāhū’s record keeping practices relating, in particular, to emails. It is my opinion that Te Tāhū appears to have acted contrary to law in relation to sections 17(1) and 17(2) of the Public Records Act 2005 which, respectively, require Te Tāhū to:

• create and maintain a full and accurate record its affairs; and

• maintain records in an accessible form to enable use for subsequent reference.

However, I have not made a recommendation in this instance as Te Tāhū, in its response to my provisional opinion, has outlined a number of steps it has taken, and which were underway concurrent with my investigation, to improve ‘its ability to meet the requirements of the Public Records Act 2005 and the Information and Records Management Standard issued by the Chief Archivist.’

Te Tāhū has accepted all my suggested action points, and notes that it is already progressing some of these. I look forward to further productive engagement with Te Tāhū in the months to come as it works through my recommendation and suggested action points.



Peter Boshier

Chief Ombudsman

3 June 2022

# Executive summary

This summary draws together the key findings and suggested actions from my investigation.

### Te Tāhū’s special role under the OIA

Although Te Tāhū delegated its OIA advice and assistance function under section 46 of the OIA to Te Kawa Mataaho Public Service Commission (formerly the State Services Commission) in 2016, it has retained other responsibilities including, as administrator of the Act, the stewardship obligations specific to this legislation.[[5]](#footnote-6)

One of Te Tāhū’s statutory obligations, under section 20 of the OIA, is to maintain the Directory of Official Information (the Directory). Agencies are required to submit information to Te Tāhū for biannual publication of a Directory, the intent of which is to assist requesters in understanding the type of information agencies hold, in order that they can make targeted requests for information.

I consider that if Te Tāhū provided guidance to agencies on the type of information their entries should contain, it would greatly improve the quality and consistency of the information in the Directory. This echoes the view of my predecessor who, in her 2015 Not a Game of Hide Seek report, made a recommendation to this effect. Unfortunately, Te Tāhū has not fulfilled it. There are also a number of notable omissions in the latest version of the Directory.

It is my opinion that Te Tāhū has acted unreasonably by failing to fulfil its role as administrator and steward of the OIA in respect of:

* providing guidance to agencies to facilitate their compliance with their statutory responsibility under section 20(3) of the OIA; and
* its obligation under section 20(4) of the OIA to ‘have regard…to the need to assist members of the public to obtain official information’.

I recommend Te Tāhū, with input from my Office and within 12 months, develop and issue guidance for agencies on the type of information that should be included in the Directory of Official Information that will assist requesters to make effective, targeted OIA requests to agencies. I am also likely to recommend that it develop and implement a plan, with input from my Office, to address the omissions of agency entries from the Directory, and improve accessibility and usability.

In addition, I consider Te Tāhū should issue an instruction to agencies to reproduce Directory entries on their own websites and, where possible, Directory entries should contain hyperlinks to any documents to which they refer.

I am pleased that Te Tāhū, in its response to my provisional opinion, indicated its acceptance of my recommendation, and has already confirmed steps to improve the Directory.

Te Tāhū delegated its section 46 responsibilities to Te Kawa Mataaho in 2016. However, the instrument of this delegation only referred to delegating its ‘function of providing advice and assistance on the OIA’ to Te Kawa Mataaho. There was a lack of specificity about exactly what this entailed, which may have contributed to confusion around which party was responsible for the review and updating of the OIA charging guidelines[[6]](#footnote-7). I am disappointed that the lack of clarity of section 46 responsibilities from Te Tāhū may have contributed to a situation where important guidance for agencies on a key tool in the OIA was allowed to become outdated.

As Te Tāhū administers of the OIA, I consider it has ultimate responsibility to ensure that the advice and assistance role is fulfilled even if it has delegated the responsibility for discharging it. As such, it should ensure the role it has delegated to Te Kawa Mataaho is clearly defined. In its response to my provisional opinion, Te Tāhū confirmed that it would do so.

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| **Recommendation: Te Tāhū’s special role under the OIA** |
| Within 12 months and with input from my Office, (i) develop and issue guidance for agencies on the type of information that should be included in the Directory of Official Information that will assist requesters to make effective, targeted OIA requests to agencies; (ii) develop and implement a plan, with input from my Office, to address the main omissions of agency entries from the Directory and to improve its accessibility and usability. |

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| **Action points: Te Tāhū’s special role under the OIA** |
| 1. Issue guidance to agencies to publish their Directory of Official Information entry on their own website, in addition to the centrally published version. |
| 1. Encourage agencies to include hyperlinks to the documents listed in their Directory entries, where possible. |
| 1. Clarify and confirm with Te Kawa Mataaho the roles and responsibilities delegated to it under section 46 of the OIA. |

### Leadership and culture

Leadership is key to developing and maintaining a strong culture of openness and transparency within an agency. Information gathered from staff surveys and meetings suggests that overall, staff feel Te Tāhū’s Strategic Leadership team is supportive of the OIA and the culture is generally open. There were examples of the Chief Executive providing internal messaging to staff about the OIA, and staff survey results suggest the signals sent from leaders about the OIA and openness are generally good.

Messaging from agencies to the public about the OIA and openness is also important. Te Tāhū has some broad, overarching statements about the importance of the OIA on its OIA webpage, but it may wish to consider whether it can do more to ensure the public are clear about Te Tāhū’s commitment to openness, transparency and the OIA.

Te Tāhū has a link to its OIA webpage on the landing page of its website. It is clearly signposted and includes a lot of useful information on the OIA and openness. I have made a small number of suggestions that I consider will improve the OIA webpage even further.

I am pleased Te Tāhū has a ‘consultation hub’ in a prominent position on the home page and it has been updated to include information about the OIA and Privacy Act and circumstances in which a submitter’s information may be released.

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| **Action point: Leadership and culture** |
| 1. Update the OIA webpage incorporating my suggestions. |

### Organisation structure, staffing and capability

Te Tāhū has recently created the Ministerial Relations and Services team that handles OIA correspondence in what is a ‘partially-centralised’ (or mixed) OIA processing model. The team has an increased number of staff dealing with OIA requests and Te Tāhū states that the new structure has had a positive impact on timeliness statistics. I commend Te Tāhū for the additional resourcing in this area and I support the review to ensure the model is fit for purpose and the most effective operating model for OIA processing.

Te Tāhū has improved its provision of OIA training since 2017. It delivers an online training module and ad-hoc specialist training. However, there are some improvements to training that would ensure staff have a good understanding of the OIA. Currently, Te Tāhū-wide induction training does not include an introduction to the OIA. In addition, Te Tāhū did not provide evidence of conducting OIA training to senior leaders and I suggest conducting further in-depth training for specialised roles.

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| **Action point: Organisation structure, staffing and capability** |
| 1. Ensure regular OIA training is provided to:  * all staff at induction; * in-depth training for specialised roles such as those involved in processing OIA requests such as subject matter experts and the Communication Services team; and * senior leaders. |

### Internal policies, procedures and resources

Te Tāhū has an OIA policy and a number of guidance documents. The majority of staff survey respondents considered the guidance material easy to find. I applaud Te Tāhū for having a wide variety of OIA resources to assist staff, and for the generally sound content within the resources. On the whole, the guidance provides clear and practical steps for staff completing OIA requests. However, in order to further lift the quality of the resources, I suggest Te Tāhū review its guidance and consider including additional information, such as:

* keeping records of scoping meetings and searches;
* keeping a record of public interest considerations;
* peer review processes;
* the differentiation between consultation and notification to the Minister’s office; and
* additional guidance on charging for the supply of official information.

I also encourage Te Tāhū to publish the updated OIA guidance documents on its website. Guidance which is used to make agencies more open and accountable to the public should, in turn, be made available to the public.

Te Tāhū has a number of internal guidance documents related to the proactive release of information. The guidance about publishing OIA requests broadly outlines the process to prepare and publish OIA request documents on Te Tāhū’s website. However, while I commend Te Tāhū for producing guidance around the proactive release of Cabinet papers and OIA request documents, there is no overarching proactive release policy document. I encourage Te Tāhū to revisit the OIA proactive release document to ensure it is fit for purpose and to prioritise the drafting of an overarching a proactive release policy. I also encourage Te Tāhū to publish any proactive release policy on its website.

Te Tāhū’s information management systems were identified as an issue by initial and post-lockdown staff survey respondents. Te Tāhū uses a number of different information management systems that one staff member described as ‘disparate and disconnected’. If documents are not stored correctly or able to be retrieved, OIA requests will not be responded to in an accurate or fulsome manner. I urge Te Tāhū to consider the feedback from staff members on its information management systems and conduct a review to ensure the best system is in place.

In addition to having a fit-for-purpose information management system, adequate guidance and training is required to ensure staff are clear about their responsibilities in relation to the Public Records Act 2005 (PRA) and the OIA. Te Tāhū has a good overarching policy, which is operationalised by using material that encourages staff to consider information management on a case-by-case basis. However, there is some information that I consider to be lacking, which Te Tāhū should include in its information management guidance. Te Tāhū should consider including further guidance on creating, organising, maintaining and storing records; managing and modifying records; and a guide to determining which records systems exist and what information each system holds.

Te Tāhū currently conducts some online training for staff on Data and Information. However, the training is not compulsory to all staff and I am concerned that Te Tāhū stated that only approximately 15 percent of current staff members have completed the training. I encourage Te Tāhū to consider reviewing its training to ensure it is providing sufficient information to staff on information management and record keeping to ensure they are adhering to the PRA which, in turn, helps to facilitate compliance with the OIA.

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| **Action points: Internal policies, procedures and resources** |
| 1. Review and update OIA guidance material incorporating my suggestions. |
| 1. Publish the OIA guidance material on Te Tāhū’s website. |
| 1. Finalise and publish a comprehensive proactive release policy. |
| 1. Review information management system to ensure it enables compliance with the OIA. |
| 1. Review and update information management guidance and training to incorporate my suggestions. |

### Current practices

To gain an understanding of how Te Tāhū processes requests, my investigators reviewed a selection of OIA request files. Overall, Te Tāhū’s OIA handling process is good, but I identified some inconsistencies. It is positive that the progress on OIA requests is tracked and maximum statutory timeframes were usually adhered to. Correspondence was generally of a high standard, and responses referred to requesters’ right to complain to me, where applicable. In addition, Te Tāhū has some excellent initiatives, such as providing counselling sessions to staff to discuss the processing of sensitive OIA requests.

However, there were some vulnerabilities. For instance, although relevant decision letters include standard wording about considering the public interest, there was little evidence that public interest considerations had genuinely taken place. A number of record keeping issues were also identified. There were inadequate records kept of searches for information requested under the OIA; no records of telephone conversations or meetings; and a number of blank coversheets were included in the samples provided to me.

I also identified issues with email record keeping. When I requested acknowledgement emails as part of the sample OIA file review, it became apparent that the emails were saved in an individual’s mailbox, and the person had left the organisation. While the emails could be retrieved, it would have come at a cost to Te Tāhū. The same issue was evident in the practices of the Communications Services team where an email could not be provided as it was saved in an individual’s mailbox and the individual had left Te Tāhū.

A number of staff survey respondents also said they had been advised to permanently delete all emails stored in their ‘deleted’ folders after 60 days. While there may be no issue with deleting some emails in accordance with an established disposal authority, I urge Te Tāhū to ensure staff are saving business records, including key emails, onto a shared network before they are deleting them from email storage. If documents are not stored correctly, staff may not be able to identify, access and collate information that has been requested under the Act.

In its response to my provisional opinion, Te Tāhū stated its view that ‘(i)n any large, complex system that involves hundreds of thousands of documents and thousands of interactions between officials, there will always be issues of human error or inaccuracies. I understand we did identify a small number of instances of poor practice …. and I would be concerned if this was elevated to a finding of unlawfulness’.

My investigation relied on a sample of files to identify practice. Within that sample, numerous examples of insufficient record keeping were identified. My finding is also based on the views and experiences of staff, some of whom expressed concerns with Te Tāhū’s record keeping practices around email correspondence, and confirmed that practices related to keeping emails in mailboxes rather than in shared drives, were not uncommon. Accordingly, I have not been persuaded to depart from my opinion that Te Tāhū appears to have acted contrary to law in relation to sections 17(1) and 17(2) of the Public Records Act 2005 which, respectively, require Te Tāhū to:[[7]](#footnote-8)

* create and maintain a full and accurate record of its affairs; and
* maintain records in an accessible form to enable use for subsequent reference.

Despite this opinion, I have not made a recommendation in this instance as Te Tāhū, in its response to my provisional opinion, confirmed a number of steps it is taking to improve its information management systems and record keeping practices. I expect sufficient records of substantive matters to be kept, and for those records to be accessible so that they can be used for subsequent reference by the agency when required, including during a review by me.

Te Tāhū’s reported percentage of OIA requests completed within the maximum statutory time limit for the last six years has been somewhat changeable. The lowest reported percentages were in 2017/18 and 2019/20. After the reported timeliness rates dropped in 2017/18, the Chief Executive started monitoring OIA performance and compliance at a Strategic Leadership Team level. This led to an increase in reported timeliness in 2018/19, which dropped again in 2019/20 due to circumstances arising as a result of the 2020 lockdown. These include some difficulties with technology and resources, and a lack of staff or resourcing to process requests.

The proactive release of information to the public promotes good government, transparency and fosters public trust. The Public Service Commission website states that Te Tāhū published two OIA responses from January to June 2021. The low number of responses released so far may be due to a number of reasons. Te Tāhū also releases a variety of other information proactively, including Cabinet papers, some COVID-19 information, a range of survey information and commonly requested statistics. However, I urge Te Tāhū to consider broadening the scope of OIA requests eligible for public release.

It appears Te Tāhū had a number of challenges maintaining its obligations under the OIA during the 2020 lockdown, including initially providing mixed messages to staff about the prioritisation of OIA requests. I understand that this stemmed from cross agency concerns at the start of the pandemic regarding the likelihood that OIA requests may not be able to be prioritised or met in a ‘worst case scenario’. It is pleasing that a cohesive message from leaders appeared to emerge which confirmed the priority of the OIA over the lockdown.

Te Tāhū also had difficulties with technology and resources, including a lack of laptops and issues with the electronic records management system. There was a reported lack of staff or resourcing to process requests. While improvements have been made on many of these issues, I am concerned that when asked if Te Tāhū had adequate resources to cope with OIA responses during the 2021 lockdown, it said it was much better prepared in terms of technology, but approximately 50 percent of staff in the Ministerial Relations and Services team still did not have a laptop to enable them to access Ministry systems and information. I suggest Te Tāhū review its OIA practices during the 2020 and 2021 lockdowns to ensure Te Tāhū can meet its obligations under the OIA should a lockdown or emergency occur in the future.

Te Tāhū’s OIA policy and its process guides include some detail on Te Tāhū’s interactions with Ministers’ offices on departmental OIA requests. The section of the policy dealing with Ministerial interactions includes some important aspects I consider a Ministerial protocol should cover. However, the timeframe in which responses should be sent to Ministers’ office as an ‘*fyi*’, is not set out clearly in policy or guidance. I suggest Te Tāhū review and update written guidance on its interactions with Ministers’ office on departmental OIA requests incorporating my suggestions. This will ensure Te Tāhū’s practice and its written resources are in alignment. I also suggest the guidance is agreed with the Minister’s office.

Te Tāhū’s media practices are guided by a media policy, which was provided to me as part of this investigation. The policy contains a small section about the OIA. The team that deals with requests from the media is the Communications Services team. As part of my investigation, I reviewed a sample of files showing the Communications Services team’s handling of information requests. I was very pleased to see some excellent practices from the media team in their helpful exchanges with members of the media. I was impressed with the way the Communications Services team appears to work with the Ministerial Relations and Services team to handle complex requests for information. However, the Communication Services team’s record keeping practices appear somewhat inconsistent. Te Tāhū should consider amending the Communication Services team’s practices to ensure full and accurate records are kept, maintained and stored accessibly.

I remind Te Tāhū that, where a request for held information is refused, section 19 of the OIA must be complied with in all respects, including advising requesters of their right to complain to me. The messaging from Senior Leaders to staff should also reinforce that requests for information handled by the Communications Services team must adhere to the OIA. I suggest Te Tāhū review and update the media policy incorporating my suggestions.

All public service and non-public service agencies are required to meet the NZ Government Web Accessibility Standard. My investigators have reviewed a range of documents released on Te Tāhū’s website, and responses to OIA requests submitted to Te Tāhū via the ‘FYI’ website. Although some of the documents reviewed were in searchable formats, the practice appears inconsistent. I suggest Te Tāhū ensure all documents proactively released, are searchable and not ‘image only’, and all visual elements are tagged with alternative text. In addition, all documents provided to OIA requesters should be searchable and not ‘image only’.

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| **Action points: Current practices** |
| 1. Amend Te Tāhū’s record keeping practices to ensure full and accurate records are created, maintained and stored accessibly. |
| 1. Ensure OIA decision makers consider and record the public interest test where applicable. |
| 1. Amend OIA record keeping practices, to ensure:  * a record of the search for OIA request documents is kept; * substantive correspondence is created and maintained such as telephone conversations, meetings, verbal discussions and extension letters; and * coversheets are completed and saved in every instance. |
| 1. Amend record keeping practices to ensure business records, including OIA acknowledgement emails and other key emails, are saved in a shared network. |
| 1. Consider broadening the scope of OIA requests eligible for public release. |
| 1. Review OIA practices during the 2020 and 2021 lockdowns to ensure Te Tāhū can meet its obligations under the OIA should a lockdown or emergency occur in the future. |
| 1. Review and update written guidance on Te Tāhū’s interactions with Ministers’ office on departmental OIA requests incorporating my suggestions to ensure practice and written resources are in alignment. |
| 1. Ensure the guidance on Ministerial interactions is discussed and agreed with the Minister’s office. |
| 1. Review and update media policy incorporating my suggestions. |
| 1. Amend the Communications Services team’s practices to ensure that full and accurate records are created, maintained, and stored accessibly. |
| 1. Ensure all responses to information requests are dealt with in accordance with the provisions of the OIA, including citing the reasons for refusal and the requester’s right to complain to me where requests are fully or partially refused. |
| 1. Ensure messaging from senior leaders reinforces that requests for information handled by the Communications Services team must adhere to the OIA. |
| 1. Ensure all documents proactively released, are searchable and not ‘image only’, and all visual elements are tagged with alternative text. |
| 1. Ensure all documents provided to OIA requesters are searchable and not ‘image only’. |

### Performance monitoring and learning

Te Tāhū collects a variety of information on the OIA requests it receives. Recorded information largely focuses on request progress and compliance with the maximum statutory timeframe. I consider Te Tāhū would benefit from expanding the range of data it collects. Te Tāhū has advised that the Ministerial Relations and Services team creates a variety of reports using data collected in JAX. However, I suggest Te Tāhū considers improving details in its regular reporting of statistics to senior leadership.

Te Tāhū has a robust peer review process for OIA responses but does not have a post-closure quality assurance process. Quality assurance is conducted once the process of responding to the request is complete, and has a broader focus on the effectiveness of the process as a whole. I encourage Te Tāhū to develop a quality assurance process for completed requests, given the valuable qualitative data that can be gained.

Te Tāhū has advised that its Legal team has shared information about recent Ombudsman investigations, including guidance issued by my Office, at Ministry-wide Official Correspondence meetings. However, I consider that Te Tāhū would benefit from a formalised process to ensure case notes, lessons from investigation outcomes, and guidance published by my Office are incorporated into Te Tāhū’s practices and guidance where relevant.

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| **Action points: Performance monitoring and learning** |
| 1. Collect and analyse further qualitative data on the handling of OIA requests. |
| 1. Improve details in regular reporting of statistics to senior leadership. |
| 1. Develop a formal quality assurance process for completed OIA requests. |
| 1. Formalise the process for learning from Ombudsman investigations and guidance, and reflect this in OIA policy and procedures. |

# Te Tāhū’s special role under the OIA

Te Tāhū is not only subject to the OIA, but also holds a role in OIA leadership and oversight as the administrator of the Act with specific statutory functions:

* Under section 20(2) of the OIA, to publish an updated Directory of Official information every two years.
* Under section 46 of the OIA, to provide advice and assistance to agencies to act in accordance with the Act; and

On 29 November 2016, Te Tāhū delegated its OIA advice and assistance function under section 46 of the OIA to Te Kawa Mataaho Public Service Commission (Te Kawa Mataaho, formerly the State Services Commission).

### Directory of official information – section 20 of the OIA

Te Tāhū has a statutory obligation under section 20 of the OIA to publish a *Directory of Official Information* (the Directory)*,* and to update it at least every two years. This obligation is not impacted by the delegation of its advice and assistance role under section 46 of the OIA to Te Kawa Mataaho. The Directory contains details about each department and organisation subject to the OIA and the information they hold.

Te Tāhū published an updated Directory of Official Information in 2019, and, roughly in accordance with the requirement to update it every two years, it published an updated version at the time of writing my provisional opinion in March 2022.

The *Not a Game of Hide and Seek* report contained the following recommendation:

Te Tāhū of Justice should develop guidance for agencies (and consider developing a model publication scheme) on what should be included in the Directory of Official Information that will assist requesters to make effective, targeted OIA requests to agencies.

However, to date, Te Tāhū has not developed any specific written guidance for agencies on the type of information to include in their Directory entries.

Rather, Te Tāhū advised me that, in updating the Directory in 2019, it engaged with agencies and ‘pointed agencies to their previous responses and asked them to confirm whether they were current or to provide updated information. Those agencies that did not respond, were then sent a letter from the Chief Legal Counsel reminding them of their statutory responsibilities to provide this information.’ Te Tāhū did not offer additional guidance to agencies along the lines recommended by my predecessor in 2015 as to the type of information they should include to assist requesters, nor on whether their existing entries were sufficient/useful.

Without the specific guidance from Te Tāhū that was originally recommended, agencies continue to be left to interpret for themselves the information they should provide for publication. This is outlined in broad terms in section 20(1)(a-d) of the OIA as:

* a description of its structure, functions, and responsibilities including those of any of its statutory officers or advisory committees; and
* a general description of the categories of documents held by it; and
* a description of all manuals, and similar types of documents which contain policies, principles, rules, or guidelines in accordance with which decisions or recommendations are made in respect of any person or body of persons in his or her or its personal capacity; and
* a statement of any information that needs to be available to members of the public who wish to obtain official information from the public service agency or organisation, which statement shall include particulars of the officer or officers to whom requests for official information or particular classes of information should be sent.

The public interest rationale for this provision is clear. Having access to this information is intended to help requesters to formulate their requests with due particularity. In turn, this should make it easier for agencies to respond to requests by reducing the transactional burden of either trying to interpret broadly phased approaches for access to official information they are thought to hold, or responding to multiple requests from requesters who have had difficulty describing what they are seeking. Without this additional guidance, I note that the entries in the Directory are somewhat inconsistent. For example, there are varying levels of detail in agencies’ description of the categories of documents and manuals they hold, many being so limited in content that I question their usefulness to requesters in assisting them to formulate targeted requests. It is for these reasons that I concur with my predecessor’s original view. The inconsistencies may be remedied through the provision of guidance to agencies by Te Tāhū.

In the entries I reviewed from the 2019 publication of the Directory, I saw varied interpretations of agencies’ requirement to ‘…include particulars of the officer or officers to whom requests for official information or particular classes of information should be sent’ with some agencies naming and providing contact details for an official such as the manager of the agency’s OIA team, and others providing only a generic agency email address.

In addition, none of the entries that I reviewed held a description of the functions and responsibilities of agencies’ Privacy Officer. This is a statutory role and, as such, a description of the function and responsibilities of that the role should feature in agencies’ Directory entries.

The 2022 version of the Directory contains no entry at all for two Departments (Te Tāhū of Business, Innovation and Employment and Te Tāhū of Housing and Urban Development). As one of the country’s largest Ministries, with a key role in shaping New Zealand’s economy, the omission of MBIE is a notable oversight. In the housing area, both Te Tāhū and Kāinga Ora are excluded while the defunct Housing New Zealand Corporation remains. Outside the core Public Service, there are many additional omissions.

Finally, the way in which the Directory is published (in several PDF documents with no alternative formats or interactive index) renders it inaccessible to some disabled people (in contravention of the Accessibility Charter)[[8]](#footnote-9) and cumbersome for everyone.

According to Te Tāhū’s website, the purpose of the Directory is to ‘assist members of the public to obtain official information and to effectively exercise their rights under [the] Act’ by providing information about the agencies subject to the Act, and the information they hold. This echoes section 20(4) of the OIA which states:

In complying with [its obligation to publish the Directory of Official Information], Te Tāhū of Justice shall have regard, among other things, to the need to assist members of the public to obtain official information and to effectively exercise their rights under this Act.

For the reasons outlined above, it is my opinion that Te Tāhū has acted unreasonably by failing to fulfil its role as administrator and steward of the OIA in respect of:

* providing guidance to agencies to facilitate their compliance with their statutory responsibility under section 20(3) of the OIA, and
* its obligation under section 20(4) of the OIA to ‘have regard…to the need to assist members of the public to obtain official information’.

I recommend that Te Tāhū, with input from my Office and within 12 months, develop and issue guidance for agencies on the type of information that should be included in the Directory of Official Information that will assist requesters to make effective, targeted OIA requests to agencies. I also recommend that it develop and implement a plan, with input from my Office, on addressing the omissions of agency entries from the Directory and improving accessibility and usability.

One final observation I make on this matter, which might assist Te Tāhū, is that although at this stage agencies are not compelled to do so by statute, nothing inhibits Te Tāhū from strongly encouraging them to publish information from their Directory entries on their own websites. It may, in fact, be possible and appropriate to interpret section 20(1) of the OIA as permitting publication of the Directory in this way, rather than (or in addition to) a single, standalone directory. In my view, it may be most useful to requesters for there to be a centralised Directory published by Te Tāhū, and individual entries on each agency’s website. Te Tāhū should give consideration to this issue and advise other agencies accordingly.

Section 20(1)(c) of the OIA states that information published in the Directory should include ‘a description of all manuals, and similar types of documents which contain policies, principles, rules, or guidelines in accordance with which decisions or recommendations are made in respect of any person or body of persons in his or her or its personal capacity’. Requesters have a presumptive right of access to information of this type in accordance with section 22 of the OIA.[[9]](#footnote-10) Accordingly, and where possible, I consider it would be helpful for agencies to link these documents within their Directory entries—those centrally published by Te Tāhū and published on their own websites.

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| Recommendation |
| Within 12 months and with input from my Office, (i) develop and issue guidance for agencies on the type of information that should be included in the Directory of Official Information that will assist requesters to make effective, targeted OIA requests to agencies; (ii) develop and implement a plan, with input from my Office, to address the main omissions of agency entries from the Directory and to improve its accessibility and usability |

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| Action points |
| Issue guidance to agencies to publish their Directory of Official Information entry on their own website, in addition to the centrally published version. |
| Encourage agencies to include hyperlinks to the documents listed in their Directory entries, where possible. |

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| **Te Tāhū’s response**  In its response to my provisional opinion, Te Tāhū noted that it ‘has been working on updating the Directory of Official Information for the past six months. This update will ensure that there are no agencies subject to the OIA that are omitted from the Directory. This update of the Directory should have been completed in 2021, however it was delayed due to the impacts of COVID-19.We have contacted 282 agencies to provide updated information for the Directory. Sections A-F of the Directory have been updated and published to the website, and all sections are planned to be updated by 30 June 2022.’  **My comments**  I acknowledge the recent work Te Tāhū has done to improve the Directory. I am heartened by Te Tāhū’s response to my provisional opinion, and its willingness to take steps to optimise the Directory. I look forward to further contact with Te Tāhū over the coming months to ensure the Directory is of the greatest utility to requesters. |

### Delegation of responsibilities under section 46 of the OIA

The memorandum of understanding and letter through which Te Tāhū delegated its responsibilities under section 46 of the OIA to Te Kawa Mataaho stated only that it ‘delegate(d) Te Tāhū of Justice’s function of providing advice and assistance on the OIA to the State Services Commissioner.’

Although the letter acknowledged the Commissioner’s role in promoting transparent accountability in the State services, and Te Kawa Mataaho’s role as lead agency for New Zealand’s membership of the Open Government Partnership (OGP),[[10]](#footnote-11) it did not include any details on the specific responsibilities the delegation entailed. Indeed, at the beginning of my current investigation there was confusion about whether Te Tāhū or Te Kawa Mataaho held responsibility for the OIA charging guidelines.[[11]](#footnote-12) These were produced by Te Tāhū in 1992 to guide agencies on reasonable charges for the supply of information in response to an OIA request.

The *Not a Game of Hide and Seek* report contained the following recommendation:

The Ministry of Justice should review and update its charging guidelines.

Subsequent to this recommendation being made, Te Tāhū advised me in 2017 that it should be transferred to Te Kawa Mataaho to reflect that responsibility had been delegated to it.

At the beginning of the current investigation in 2019, I noted that no progress had been made toward implementing the recommendation, and that the charging guidelines were still published on Te Tāhū’s website, not that of Te Kawa Mataaho. I therefore requested Te Tāhū clarify the matter. Te Tāhū advised that responsibility for maintaining the charging guidelines did not pass to Te Kawa Mataaho with the delegation of obligations as I had previously been advised; it still held responsibility for them. However, it also advised in response to my initial questionnaire, that it had ‘no current plans to update them’.

Fixing a charge for the supply of official information is a tool that agencies can use to enable them to release information where it may otherwise be withheld on the basis that substantial collation and/or research would unreasonably impact its operations. Agencies are, in fact, obliged under section 18A(1)(a) of the OIA to consider whether fixing a charge for the supply of information would enable a request involving substantial collation or research to be granted.

In this respect, charging is an important mechanism for increasing the availability of information. This aligns both with one of the fundamental purposes of OIA, and with the Open Government Partnership. As such, it is important that this mechanism works effectively. The existing charging guidelines have not been updated since 2002; two decades ago.

While the charging provision is not necessarily intended to be used as a tool for full cost recovery, it is nonetheless intended to offset some costs associated with requests, which may otherwise be impracticable or onerous for agencies to fulfil. The allowable cost per hour has not been updated for two decades. It is therefore unlikely to be reflective of current costs incurred by agencies for the supply of information. Because the costs are so out-of-date, the charging guidelines may have the perverse effect of discouraging agencies from serious contemplation of a charge. This may ultimately lead to requests being unnecessarily refused, which undermines the primary purpose of the OIA. This would be of great concern to me, as it should be to Te Tāhū, as administrator of that Act.

It is concerning that the tasks and responsibilities that Te Tāhū has delegated to Te Kawa Mataaho have not been clearly defined. Based on the apparent confusion about which agency held responsibility for updating the charging guidelines, it appears to me that the lack of clarity around the delegation has contributed to a situation where there is insufficient assistance available for agencies on a key aspect of OIA practice.

As I stated earlier, although it has delegated its advice and assistance role, Te Tāhū remains the administrator of the OIA. As such, I consider it holds responsibility for ensuring the delegation of its responsibilities to Te Kawa Mataaho is clear and have been fulfilled. This should include a clear description of the tasks and responsibilities that fall under section 46 of the OIA, and which agency is responsible for fulfilling them.

I consider it would be best practice for Te Tāhū to ensure the roles and responsibilities delegated to Te Kawa Mataaho are clearly defined. I suggest that Te Tāhū clarify and confirm with Te Kawa Mataaho the roles and responsibilities delegated to it under section 46 of the OIA.

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| Action point |
| Clarify and confirm with Te Kawa Mataaho the roles and responsibilities delegated to it under section 46 of the OIA. |

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| **Te Tāhū’s response**  In its response to my provisional opinion, Te Tāhū stated that it ‘will work with Te Kawa Mataaho to document in more detail the specific responsibilities and activities that have been delegated to Te Kawa Mataaho.’  **My comments**  I am encouraged by Te Tāhū’s response, and its willingness to work with Te Kawa Mataaho to add some specificity around the responsibilities and tasks under section 46 of the OIA that it delegated to that agency. As Te Tāhū is aware, my Office is available to assist or advise as these discussions take place. |

# Leadership and culture

Achieving the purposes of the OIA depends significantly on the culture of the agency and the attitudes and actions of its leaders. Ministers, chief executives and senior managers should take the lead in developing an environment that promotes openness and transparency, champions positive engagement with those who want to know and understand what work they are doing, and enables compliance with the principle, purposes and provisions of the OIA.

When it is clear to staff that their leaders respond to requests for official information positively and view it as an opportunity to operate in a more transparent, engaging and accountable manner, they will follow.

To assess agencies’ leadership and culture, I considered whether:

* chief executives, senior leaders and managers demonstrated a commitment to the agency meeting its obligations under the OIA and actively fostered a culture of openness;
* senior leadership had established an effective official information strategic framework which promoted an official information culture open to the release of information; and
* senior leadership demonstrated a commitment to proactive disclosure and public participation, with clear links to the agency’s strategic plans, creating a public perception of openness.

### Increasingly open leadership

Te Tāhū’s Strategic Leadership comprises the Secretary for Justice and Chief Executive, the Chief Operating Officer and five Deputy Secretaries. The Chief Executive was appointed in February 2019. Overall, information gathered from staff surveys and meetings indicates that staff feel Te Tāhū’s Strategic Leadership team is supportive of the OIA and the culture is generally open.

As part of my investigation, I conducted surveys of Ministry staff in early 2020 (initial staff survey) and following the COVID-19 2020 lockdown (post-2020 lockdown staff survey). In the initial survey, staff were asked about their impression of the agency’s culture and leadership in a staff survey.[[12]](#footnote-13) Approximately 82 percent of staff who responded said they considered Te Tāhū to be either strongly or moderately pro-openness.

A number of comments from respondents in the initial staff survey suggest a culture shift over the last few years. Some examples of comments from the initial staff survey include:

It is slowly improving under our new CE [Chief Executive] which is encouraging.

A number of meetings were held with staff as part of this investigation. The feedback from staff meetings also supports that the Chief Executive is increasingly open and transparent. One meeting attendee said ‘[Chief Executive] is very open and transparent, definitely a role model. I don’t think he can do any more’.

It is encouraging that staff generally perceive the Chief Executive to be open, transparent and ‘pro-OIA’. When it is clear to staff that leaders respond to OIA requests positively and view it as an opportunity to operate more transparently, they will follow.

### Messaging to staff

When this investigation commenced, I invited Te Tāhū to provide examples of recent messaging from senior leadership to staff about the importance of complying with the purposes, principle and provisions of the OIA. Te Tāhū provided a number of examples, from 2018-2020, including:

* a message from the Chief Executive to the Director of Ministerial Relations and Services, in relation to July to December 2019 OIA timeliness statistics;
* several ‘news items’ from Te Tāhū’s intranet (called ‘JET’), highlighting topics related to the OIA; and
* a short video, uploaded to JET, featuring the Chief Executive and other leaders discussing the importance of the OIA.

I note the latter highlighted not only the importance of OIA compliance, but the important role of the OIA in New Zealand’s democratic process, including maintaining a consistently high placing in Transparency International’s Corruption Perceptions Index.[[13]](#footnote-14)

More recent examples were also provided of the Chief Executive providing internal messaging about the OIA, both before and during the 2020 COVID-19 lockdown. For instance, the Chief Executive said his messaging over lockdown was in the spirit of release and openness. Te Tāhū also advised that the Chief Executive has an internal blog with videos, including subtitles.

I met with the Chief Executive in relation to this investigation, to discuss the OIA and openness and transparency generally. When asked about messaging, the Chief Executive advised that he had recently completed a video about Te Tāhū engaging with the media in a positive way. He considered that the video included a clear message and he role models openness with the judiciary and the legal profession. However, he did also acknowledge some more work needs to be done on Te Tāhū’s ‘culture’. For instance, he said ‘I need to model that we should not shy away from putting information out there’. The proactive release of information, including OIA responses, is one way agencies demonstrate it is open and transparent to the public. This issue is discussed below in [*Proactive release of information*](#_Proactive_release_of) *practices*.

I asked Ministry staff about their perception of leaders’ approach to openness in my initial survey.[[14]](#footnote-15) Their answers are shown in the table below.

How would you rate the signals sent by the following people *about the OIA*, as it relates to your agency?

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| Leadership level | Strongly or moderately pro-disclosure | ‘They are silent on the issue’ or ‘I don’t know’ | Strongly or moderately anti-disclosure |
| Chief Executive | 55% | 44% | 1% |
| Deputy Secretary | 56% | 33% | 11% |
| Immediate Manager | 70% | 23% | 7% |

How would you rate the signals sent by the following people *about openness and public engagement more broadly*, as it relates to your agency?

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| Leadership level | Strongly or moderately pro-openness | ‘They are silent on the issue’ or ‘I don’t know’ | Strongly or moderately anti-openness |
| Chief Executive | 80% | 17% | 4% |
| Deputy Secretary | 71% | 20% | 8% |
| Immediate Manager | 70% | 24% | 6% |

Te Tāhū’s ratings from staff were around the same as or higher than the average across all 12 agencies under investigation. The average ratings are as follows:

* 56 percent of respondents said the signals sent by their Chief Executive are strongly or moderately pro-disclosure under the OIA;
* 76 percent of respondents said the signals sent by their Chief Executive are strongly or moderately pro-openness;
* 58 percent of respondents said the signals sent by Deputy Secretaries are strongly or moderately pro-disclosure under the OIA; and
* 69 percent of respondents said the signals sent by Deputy Secretaries are strongly or moderately pro-openness.

Some survey comments were positive and some indicated that improvements are still possible. An example of two initial staff survey comments include:

Messaging is more often couched in terms of compliance than commitment to openness.

It is positive that the staff survey results on leaders’ messaging on openness were generally good. However, staff views on leaders’ messaging on the OIA specifically were not as positive. I am concerned that 44 percent of staff survey respondents considered the Chief Executive to be ‘silent’ on the OIA or ‘did not know’ the Chief Executive’s view of the OIA. I urge Te Tāhū’s leaders to consider increasing messaging around the importance of the OIA.

It is important for leaders to not only say the right thing, but to also demonstrate the value of the OIA and openness with action. For instance, improved OIA training (see [*OIA training*](#_OIA_training_1)), guidance (see [*Internal policies, procedures and resources*](#_Internal_policies,_procedures)) and the proactive release of OIA responses (see [*Proactive release of information*](#_Proactive_release_of) *practices*), will also lead to staff receiving the message that the OIA is an important part of New Zealand’s constitutional framework.

### Messaging to the public

Messages from agencies to the community provide a window into the culture of an organisation. Ideally, agencies’ strategic plans and corporate documents should include clear commitments to openness, transparency and the availability of official information.

In response to my request for examples of external messaging promoting the importance of the OIA, Te Tāhū said it publishes OIA timeliness compliance statistics in its Annual Report, and provides information to the Public Service Commission on its OIA responsiveness which the Public Services Commission publishes every six months.

The information published on an agency’s website can be an indicator of senior leaders’ approach to openness. I note that Te Tāhū’s OIA webpage includes the following message about the importance of the OIA:

The Official Information Act (OIA) is an important part of New Zealand's constitutional framework. The OIA allows New Zealanders to have access to information that enables their participation in government, and hold governments and government agencies to account.

However, an initial staff survey respondent considered that Te Tāhū could do more, stating:

I feel Te Tāhū could do more to promote openness and transparency to the public.

As part of my investigation, I conducted a survey of the public, which included a question on whether respondents considered Te Tāhū publishes sufficient information about the work it is doing. Only a small number of participants responded to the survey and the majority of those who responded were either neutral about the amount of information published by Te Tāhū or considered it does not publish sufficient information about the work it is doing. One public survey respondent said:

It is good, but it isn't set up in a way that speaks to the public. It speaks to other government departments and its own staff.

But the majority of comments were more negative, one stating:

The Justice Ministry has a lot of work to do if it wants to comply with the OIA. It seeks to withhold information when it should be releasing as much information as possible.

Although Te Tāhū has taken some steps to provide messaging to the public on the OIA and openness, it may wish to consider whether it can do more to ensure the public are clear about Te Tāhū’s culture on OIA and openness more generally. For instance, as outlined in [*Proactive release of information*](#_Proactive_release_of) *practices*, Te Tāhū is currently only publishing a small number of OIA responses. The publishing of OIA requests sends a clear signal to the public that the agency is attempting to be as open and transparent as possible.

### OIA webpage

Te Tāhū adopted a new external website in June 2016. Te Tāhū said it recognised the site required improvement as it was hard to find material and it did not work well on mobile phones or tablets. Te Tāhū said that all the content was reviewed and out-of-date content and language was removed. As a part of this work, a dedicated Official Information Act section of the website was established that outlines Te Tāhū’s obligations under the OIA.[[15]](#footnote-16) Te Tāhū has a link to its OIA webpage on the landing page of its website. It is clearly signposted, and located one ‘click’ from the landing page. The OIA webpage includes information on:

* a broad overarching ‘statement of principle’ outlining the importance of the OIA and public participation in government;
* the type of information Te Tāhū holds;
* how to request information from Te Tāhū, by email or post;
* useful links, such as: to Te Tāhū’s ‘Directory of Information’,[[16]](#footnote-17) Statistics New Zealand, annual court statistics and the OIA;
* charging guidelines for OIA requests;
* how long it will take to expect a response;
* withholding information, including a link to the OIA; and
* the right to complain to my Office (although contact details are not provided on the website).

Te Tāhū said the Public Service Commission described its OIA page as an ‘exemplar’, as it provides information to requesters about their rights to access information from Te Tāhū, as well as helpful advice on sourcing information that is already publicly available.

I agree, the website does provide some useful and easy-to-understand content for requesters. However, there are some gaps in the website content. Te Tāhū’s OIA page could be further improved by adding:

* contact details to my Office to make a complaint if the requester is not satisfied with an OIA response; and
* links to Te Tāhū’s OIA, proactive release and record keeping policies and procedures.

Additionally, as discussed below in [*Accessibility and usability of official information releases*](#_Accessibility_and_usability_1), agencies should publish information in a format that accommodates the use of assistive technology. Some requesters may find other formats more accessible for a number of reasons. While the website states ‘you can specify the format you want the information presented in – for example by email or by post’, it would be desirable for the website to clearly signal to requesters that they can request information in a variety of formats, not just email and post.

I am pleased that when a visitor to the homepage hovers their cursor over the ‘About Te Tāhū’ section of the website, all the subsections immediately beneath it (including the Official Information Act section) are immediately apparent. Te Tāhū also said that if the public search for ‘OIA’ or ‘Official Information Act’ using Te Tāhū’s site search (or Google), they will be directed to the OIA section. In addition, Te Tāhū’s site is in the top five ‘hits’ when the terms ‘OIA’ or ‘Official Information Act’ are searched on Google.

I am encouraged that Te Tāhū’s website provides information to the public on the OIA and accessing information. The suggested additions will further enhance the OIA webpage and promote Te Tāhū’s intention to be more open and transparent to the public.

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| Action point |
| Update the OIA webpage incorporating my suggestions. |

### Public consultation

A link to Te Tāhū’s ‘[*Consultation Hub*](https://consultations.justice.govt.nz/)*’* is in a prominent position on the homepage and a featured consultation is included on a main tile of the homepage. Initially there was no general statement about the privacy and confidentiality of submissions visible on the homepage. However, Te Tāhū informs me that as a part of its review of the website, the Consultation Hub has since been updated. There is now comprehensive information about the terms and conditions available in the ‘*Terms of Use’[[17]](#footnote-18)* and ‘*Privacy*’[[18]](#footnote-19) sections which are linked at the bottom of the main page. The privacy policy states:

We may be asked to release submissions in accordance with the Official Information Act 1982 and the Privacy Act 1993. These laws have provisions designed to protect personal information given in confidence, but we cannot guarantee all of the information can be withheld. We will **not**release individuals’ contact details.

I note the policy states that contact details will not be released, but it does not comment on the possibility of the names of submitters being released. Successive Ombudsmen have held that disclosure of the names of submitters or the contents of submissions typically would not constitute, barring exceptional circumstances, an infringement of the interests protected by the OIA. Even if disclosure would infringe on one of the protected interests, Ombudsmen typically have recognised that there is generally a strong public interest in knowing who participated in any decision making or public policy-setting process. [[19]](#footnote-20)

In any event, agencies are under a statutory obligation to consider any request for information on its own merits, to assess each piece of requested information against the criteria in the OIA, and to make a decision on whether the OIA requires the information to be released. An agency cannot fetter this statutory discretion by pre-emptively deciding to withhold certain kinds of information.

I appreciate that it is critically important that submitters understand what will happen to their submissions, including the handling of any personal, commercial or other sensitive information within their submission. I am pleased Te Tāhū contains explicit messaging on this to submitters. The open consultations reviewed for this investigation included details on the possibility that submitter’s feedback may be released under the OIA. An example of information provided to submitters includes:

Your submission will become official information. This means Te Tāhū may be required to release all or part of the information in your submission in response to a request under the Official Information Act 1982. Te Tāhū may, however, withhold all or parts of your submission if it’s necessary to protect your privacy or if it has been supplied subject to a duty of confidence. Please tell us if you don’t want all or specific parts of your submission released, and the reasons why.[[20]](#footnote-21)

…

Please don’t share documents about Family Court cases you’ve been involved in (such as affidavits) or any specific details about your case (such as case numbers). This will help protect the privacy of other people who were involved, such as your children and whānau…

It is also important that agencies proactively release sufficient supporting information to ensure submitters have enough background material to make a more meaningful submission. In one example, Te Tāhū proactively released two cabinet papers, an interim impact summary and a discussion document to support the consultation.[[21]](#footnote-22) I am impressed that the discussion document was available in English, te reo Māori, large print, audio, easy read, as a video in sign language and was translated into approximately 15 other languages. It is important that key documents are made accessible to a wide audience in order to receive feedback from diverse voices. This is discussed further in [*Accessibility and usability of official information releases*](#_Accessibility_and_usability_1).

# Organisation structure, staffing, and capability

Responding to official information requests is not only a legal requirement but a core function of the public sector. Therefore, it is expected agencies will organise their structure and resources to ensure they are able to meet their legal obligations under the OIA, in a way that is relevant to their particular size, responsibilities and the amount of interest in the information they hold.

To assess agencies’ organisational structure, staffing and capability, I considered whether they:

* had the capacity to discharge their official information obligations, with clear and fully functioning roles, accountabilities, reporting lines, delegations and resilience arrangements; and
* had the capability to discharge their official information obligations.
  + 1. Model for handling OIA requests

Te Tāhū includes a number of staff members that work for the court. As at August 2021, Te Tāhū’s employees were divided between court and national office functions. The number of court employees is 3306 and the number of national office employees is 1189. Access to court documents usually happens under the regime set out under the Senior Courts Act and Rules/District Courts Act and Rules regimes[[22]](#footnote-23) (the Court Rules). The Court Rules provide the right of access to court documents; whereas information held by Te Tāhū is subject to the OIA.

Te Tāhū operated a largely ‘decentralised’ model for handling official correspondence until 2018. The model consisted of a small OIA team, and business units were responsible for processing OIA correspondence and responding to OIA requesters. Te Tāhū said that with this model there may have been insufficient central oversight and co-ordination of all correspondence, including OIA responses. In 2018/19, Te Tāhū ran a pilot programme to investigate establishing a more centralised unit. One meeting attendee said that as the pilot progressed, more teams got ‘*pulled into*’ the centralised model and that it has been a ‘*long slow change*’.

Te Tāhū said the pilot was successful and the Ministerial Relations and Services team was fully established by mid-2020. The Ministerial Relations and Services team includes the former Official Correspondence team. All of Te Tāhū’s correspondence is handled by the unit, in what is a ‘partially-centralised’ (or ‘mixed’) model. The Ministerial Relations and Services team processes all correspondence for Te Tāhū’s Sector, Policy, Corporate and Digital Services, and Strategy, Governance and Finance groups, which account for about half of all official correspondence. The advisers in the unit work with subject matters experts in business units to prepare correspondence, both for the Minister and Te Tāhū, including responses to OIA and Privacy Act requests, Parliamentary Questions and ministerial correspondence. The Manager of the unit reports to the Director of the Office of the Chief Executive. One meeting attendee said the new team is now considered a centralised ‘*go-to hub*’ or ‘*centre of excellence*’.

Based on information received from Ministry staff, it appears the increased oversight facilitated by the new model, has resulted in the identification of training needs in various business units. Since the team’s inception, the Principal Advisor of the Ministerial Relations and Services team, in conjunction with the legal team, has delivered training to several business units, and has also held a number of OIA training sessions, open to all staff. This is discussed further below in [*OIA training*](#_OIA_training).

Staff comments from the initial survey were mixed about the new model. An example of some comments include:

*The centralised team was only established last year. There are a lot of ideas and plans for improving training and communications, but the team is under-resourced so having difficulty finding the space to do improvement work.*

*MOJ moving from a decentralised official correspondence process to a centralised one. While this may be helping to improve consistency across OIA responses, it seems to be resulting in a loss of OIA expertise across the wider Ministry. I think we will continue to see this expertise be lost over time and with that, our people will think less about how they can share information, and be open with, the public.*

The Ministerial Relations and Services team has been in place for over a year and Te Tāhū said a full review of the team will be undertaken in December 2021. Some issues were identified when the team was being established, such as understaffing and some minor ‘*teething problems*’, but overall, Te Tāhū said the new structure is ‘*going well*’. Te Tāhū said there has been a positive difference in timeliness statistics for OIA requests managed by the Ministerial Relations and Services team compared to the areas where the team has not become involved.

I commend Te Tāhū for the additional resourcing in this area and I support the review to ensure the model is fit for purpose and the most effective operating model for OIA processing.

* + 1. OIA training

The *Not a Game of Hide and Seek* investigation outlined that an effective training framework should encompass:[[23]](#footnote-24)

* training at induction;
* introductory basic awareness of key official information principles;
* advanced courses for specialists covering, for example:
  + proper application of the public interest and harm tests;
  + dealing with broad, complex requests covering a large volume of information; and
* refresher courses.

Approximately 60 percent of initial staff survey respondents said they had received some OIA training in the last 2 years. Te Tāhū conducts several types of training. It has an online ‘Thrive’ training module, which provides guidance to staff in responding to OIA requests. The module is available to all Ministry employees, but it is not mandatory. Te Tāhū stated that approximately 250 current employees have completed the module, with records indicating that 711 current and previous employees have completed the training.

Of the staff that responded to the initial staff survey, 25 percent said they had received ad hoc one-on-one training and 27 percent said they received specialist role training. These results compare very favourably to the twelve agencies surveyed for the *Not a Game of Hide and Seek* follow up investigation.

Te Tāhū’s Legal team (the Office of Legal Counsel) provides detailed training on the OIA, which Te Tāhū said is tailored to specific audiences. It is intended that a staff member from the Ministerial Relations and Services team will deliver the training alongside the Legal team after the training materials have been refreshed. The sessions are for staff across all business units on the principles of the OIA. Comments from the initial staff survey indicate that Te Tāhū’s OIA training has improved in recent years. For instance, one respondent said:

*Education and learning about the requirements of the Official Information Act is much better.*

However, some staff members commented that they would like the training to be more formal. One staff member commented:

*I wish there was a more formal training … My learning has come partly come from what colleagues have told me, but most I have picked up from being curious about the process and finding ways to improve it for my group.*

A number of respondents said they would like the training to be more in depth and specialised. Some examples of the comments are:

*Based entirely on passing knowledge from employee to employee. The online module is a tickbox exercise that doesn't encourage real learning.*

*I would like to see more in-depth training on the grounds we use in the OIA - when to use them and not, and also managing expectations of the Ministers' office and disagreements on redactions with them and other agencies*

I am pleased Te Tāhū has improved its provision of training on the OIA since 2017. When an update was requested on the number of staff members who had been trained on the OIA, Te Tāhū said it had not kept formal records of the number of OIA training sessions conducted. However, I am pleased this practice has commenced as a result of this investigation. Te Tāhū completed a manual check and said OIA training was delivered to small groups on 23 occasions from October 2020 to August 2021.

In addition to the online training module and the ad-hoc specialist training, Te Tāhū said it has provided the following OIA training:

* Informal training to approximately 15 ‘*new stakeholders*’ from July 2020 to August 2021.
* New employees are offered OIA training. Te Tāhū said approximately two thirds take up the offer.
* New Private Secretaries were trained on the OIA in September 2021.
* The Ministerial Relations and Services team is involved in Te Tāhū’s ‘*Orientation Day market place*’. Te Tāhū said that ‘*on average five bespoke OIA training sessions eventuate from the team’s attendance*’.
* All new Ministerial Relations and Services staff, employed since February 2021, have completed the ‘*Working with the OIA*’ module and have attended workshops in:
  + OIA extensions, consultations, decisions and clarifications;
  + OIA process;
  + record keeping; and
  + have either attended or are on the waitlist for the ‘*OIA New Practitioner Forum’* facilitated by the Public Service Commission.[[24]](#footnote-25)

I am pleased Te Tāhū has some specialist or in-depth training for the Ministerial Relations and Services team, and ad hoc training is conducted to other staff on request. I stress the benefit of a wide variety of staff receiving OIA training. Te Tāhū’s ‘*mixed*’ OIA model means that any number of ‘subject matter experts’ across the organisation may be involved in OIA processing. In addition, ‘subject matter experts’ are involved in deciding what information is redacted for media information requests.

Te Tāhū still has some way to go in order to have an effective training framework as outlined in the *Not a Game of Hide and Seek* report. I am disappointed that Te Tāhū-wide induction does not include an introduction to the OIA. Only 33 percent of the staff who responded to the initial survey said they had received OIA training at induction. This is low compared to the twelve agencies surveyed for the *Not a Game of Hide and Seek* follow up investigation. One respondent said:

*New staff, especially in National Office Operations, are not provided with any formal training for responding to OIA requests, beyond more experienced staff guiding them. I think Te Tāhū would benefit from implementing training programmes for all staff that deal with the OIA and other official information (including more experienced staff).*

Te Tāhū said that induction is aimed at all its employees, regardless of their role or work and it considers it necessary to ‘*strike a balance*’ to ensure new staff have enough information to begin their roles without ‘*overwhelming them with information*’. I understand the need to make training accessible to all staff and, in the case of Te Tāhū, some staff may not directly be working with the OIA (for instance, court staff).

Te Tāhū stated that a number of operational and court staff have very little ‘*day-to-day connection*’ with the OIA and Privacy Act and it does not consider it necessary for the OIA training module to be compulsory. However, I consider the OIA to be relevant to all Government employees. As outlined in [*Model for handling OIA requests*](#_Model_for_handling), the public are not entitled to access to court documents using the OIA. The relevant legislation for this purpose are the Court Rules. However, I still consider it important for staff who work in the courts to have a basic awareness of the OIA as they may receive a request for information that is an OIA. Court staff are employed by Te Tāhū of Justice and may receive OIA requests on Te Tāhū’s behalf,[[25]](#footnote-26) whether or not the information requested relates to the courts. In addition, an OIA request might seek information held by Te Tāhū of Justice about the administrative running of the courts, statistics from the case management system, court staff personnel matters or information on court buildings, resources and support systems, all of which is subject to the OIA.[[26]](#footnote-27)

This nuance is useful for court staff to understand in order to ensure compliance when dealing with official information. This is especially important for Te Tāhū as it is a steward of the OIA and the agency that administers the Act. I consider that all Ministry employees, regardless of whether they are court staff, operational staff, or other Ministry employees, should understand the constitutional importance of the OIA, how it applies to them, and what to do if the receive a request for information.

I note that Te Tāhū did not provide evidence of conducting OIA training to senior leaders. I encourage Te Tāhū to introduce formalised OIA training to all senior leaders on a regular basis. It would send a clear message that senior leaders are committed to the principle and purposes of the Act and will more adequately equip them to apply OIA provisions appropriately. It demonstrates, from the top, that responding to OIA requests is core business and should be prioritised.

Te Tāhū may wish to be aware that my staff are available to assist with developing and/or delivering training.

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| **Action point** |
| Ensure regular OIA training is provided to:   * all staff at induction; * in-depth training for specialised roles such as those involved in processing OIA requests such as subject matter experts and the Communication Services team; and * senior leaders. |

# Internal policies, procedures and resources

I expect as a matter of good practice that agencies develop or adopt policies and procedures that will assist staff to apply the requirements of the OIA consistently. In addition, staff should be supported by good systems, tools and resources that will enable them to effectively process requests and make good decisions consistent with the provisions in the Act.

To assess agencies’ internal policies, procedures and resources, I considered whether they had accurate, comprehensive, user-friendly and accessible policies, procedures and resources that enable staff to give effect to the OIA’s principle, purposes and statutory requirements. This includes policies, procedures and resources in relation to:

* dealing with official information;
* records and information management; and
* proactive release of information.
  + 1. OIA guidance material

Te Tāhū has an OIA policy, dated July 2018, that outlines the commitment to the principles of the OIA. The policy states that Te Tāhū administers the OIA and is responsible for policy related to the Act, so ‘*it must be an exemplar for the Public Sector in the way it deals with requests*’. I am pleased that 77 percent of respondents to my initial staff survey said the OIA guidance materials are ‘*somewhat*’ or ‘*very easy’* to find/access.[[27]](#footnote-28)

The policy provides a clear definition of official information. I am pleased the policy states that Te Tāhū should proactively release selected responses to requests for official information to make information more available and assist in public understanding of issues. It also states that careful consideration will need to be given as to whether the responses should be released, or whether additional information might need to be withheld. However, as discussed in [*Proactive release of information*](#_Proactive_release_of) *practices*, the actual release of OIA responses only started in 2021.

The policy provides some guidance on interactions between Te Tāhū and Ministers’ offices, which I discuss in greater detail in [*Ministerial interactions on OIA requests*](#_Ministerial_interactions_on). The Policy also recognises the special relationship between Te Tāhū and the judiciary and its work in supporting courts and tribunals in their constitutional role to deliver justice services.

The OIA policy includes the name/role of the ‘owner’ of the policy, and specifies the next review date, which was due in July 2020. However, when an update was requested, Te Tāhū said the review was delayed due to a staffing issue and will be included on a work programme in late 2021.

Te Tāhū also has a number of other OIA guidance documents available to staff on its intranet ‘JET’. In 2018, Te Tāhū updated JET and the guidance on the OIA was updated to include five stages of handling an OIA request. The stages are scope, collate, assess, manage, finalise and release. JET also holds the templates for Te Tāhū and Minster’s letters, as well as information sheets which provide the decision maker background information about the OIA and the material to be released.

Te Tāhū said it primarily relies on Ombudsman guides, which it prints and stores in a guide folder. In addition, Te Tāhū has a number of newer process guide documents that have been in operation since March 2021, which were produced by the Ministerial Relations and Services team. For instance, one of the process guides is titled ‘Workflow’ and states that requests may be made verbally and can be received over the phone, but it is good practice to write back to the requester to confirm Te Tāhū has correctly captured their request. It also states unless there is good reason, Te Tāhū is required to provide this information within 20 working days. I suggest the guide be corrected to state that OIA requests should be completed ‘*as soon as reasonably practicable*’, and no later than 20 working days. I am pleased it states that if the requester is unhappy with the response, they have the right to raise their concerns with my office.

The scoping plan is a very good document that encourages staff to make a record of information such as due dates, the OIA process, peer review and media review. I am pleased the plan states that requests for urgency need to be considered and scoping should be completed within three days of receiving a request. It states that scoping can be completed as a meeting or discussion. However, I encourage Te Tāhū to consider including a section in the plan for recording details of the scoping meeting and/or discussion.

Te Tāhū has an information coversheet, which encourages record keeping and documentation of some internal working. However, some improvements should be considered, such as including a place in the sheet to record any consideration of public interest considerations in cases where information has been withheld under section 9 of the OIA. I am pleased that there is a place for scope interpretation and the process followed, however, Te Tāhū should consider including a section in the coversheet to record details of scoping meetings or discussions. There is, at present, no clear place to record search details.

The key OIA guidance document is called ‘Drafting OIAs’. It contains information that is useful to those processing OIA requests. The process is outlined in a clear and easy-to-understand manner. I am pleased the guidance states that requests can be made verbally and there is clear information on the purposes of the OIA and the principle of availability. I am also pleased that it states requests must be responded to ‘*as soon as reasonably practicable*’ and within the statutory maximum time limits, and refers to my online OIA calculator.

However, Te Tāhū should consider some amendments to the ‘Drafting OIAs’ guidance document to ensure best practice. For instance, when referring OIA requests going to the Minister’s office at day 15, it would be clearer if the guide outlined that process was a Ministerial *consultation[[28]](#footnote-29)* and not a *notification[[29]](#footnote-30)* (or FYI). This issue is discussed in detail below in [*Ministerial interactions on OIA requests*](#_Ministerial_interactions_on)*.*

Te Tāhū should consider including in the guide details of keeping a record of practices such as the clarification of requests, scoping meetings and details of peer review. The guide does not mention the weighing of public interest considerations in relation to withholding information under section 9 of the OIA. I suggest Te Tāhū consider including details of balancing the public interest and keeping a record of any considerations staff make. I also suggest the guide include details about how to comply with the requirements of section 19. That is, where all (or part) of a request is refused, the requester must be given the reasons for the decision, information on the right to complain to the Ombudsman and if a requester seeks it, the grounds for the decision.[[30]](#footnote-31)

Some other gaps were also noted in the guidance documents. For example, there is little or no information about:

* requests made under sections 22, 23 and Part 4 of the OIA;[[31]](#footnote-32)
* escalation processes;
* the use of conditions and release of information in alternative forms; and
* charging for the supply of official information.

While Te Tāhū has produced a generic agency guide on fixing a charge for the supply of information requested under the OIA, it does not cover the circumstances that are unique to Te Tāhū. I consider it to be too generic to serve as guidance without being supplemented with more specific details. Therefore, Te Tāhū should consider adding information to its guidance documents about Te Tāhū’s own OIA charging process.

I was pleased that during the initial lockdown, Te Tāhū produced some guidance for all business units about the OIA process that was informed by my guide, [*FAQs about official information requests during COVID-19*](https://www.ombudsman.parliament.nz/resources/faqs-about-official-information-requests-during-covid-19). It is also positive Te Tāhū has included news stories on its intranet about the adoption of the OIA policy and the training sessions. I encourage Te Tāhū to publish the updated OIA guidance documents on its website. Guidance which is used to make agencies more open and accountable to the public should, in turn, be made available to the public.

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| **Action points** |
| Review and update OIA guidance material incorporating my suggestions. |
| Publish the OIA guidance material on Te Tāhū’s website. |

* + 1. Proactive release policy

Te Tāhū has a number of internal guidance documents related to the proactive release of information, including the ‘*Proactive release of Cabinet papers*’ and a draft document titled ‘*Proactively release OIA responses*’.

The guidance regarding the proactive release of Cabinet papers gives an overview of the process for releasing papers submitted to Cabinet committees and Cabinet. The guidance states the proactive release of Cabinet papers is part of the Government’s wider plan to improve openness and reflects its commitment to the Open Government Partnership.[[32]](#footnote-33) I am pleased the document states that where information is redacted the reasons should be clearly stated and that all material published should be in a text searchable version. As discussed in [*Accessibility and usability of official information releases*](#_Accessibility_and_usability_1)*,* providing information in an ‘image only’ format could preclude the use of screen readers. The guidance also states that section 48 of the OIA does not apply with proactive release, which protects the agency against certain actions such as civil and criminal liability. The policy states that due diligence needs to be carried out to consider the potential liability in releasing certain material.

The guidance about publishing OIA requests broadly outlines the process to prepare and publish OIA request documents on Te Tāhū’s website. Te Tāhū has advised that this document, along with a proactive release approval form, will be revised shortly.

As outlined in [*Proactive release of information*](#_Proactive_release_of) *practices*, it appears from the guidance that only a limited number of requests will be considered for publication. Te Tāhū’s guidance on the proactive release of OIA requests indicates that only the requests for information received by the media or on the ‘FYI’ website are considered for publication and requests for information about operations or service delivery are not to be considered for publication. Statistics reported by Te Tāhū to the Public Service Commission indicate that Te Tāhū has only just started proactively publishing OIA responses. The Public Service Commission website states that Te Tāhū published two OIA responses from January to June 2021.[[33]](#footnote-34) Te Tāhū stated that advisors now discuss with subject matter experts whether the response can be proactively released. Te Tāhū said it is a ‘*culture shift for some SMEs [subject matter experts]*’.

While I commend Te Tāhū for producing guidance around the proactive release of Cabinet papers and OIA request documents, there is no overarching proactive release policy document concerning Ministry information generally. Agencies’ proactive release policies should cover the proactive release of information of all types, not just the release of certain types of documents such as Cabinet papers or responses to OIA requests. It is important that proactive release practice is underpinned by policy, for a number of reasons. Key amongst them is to ensure an organisation-wide commitment to:

* implementing this practice as a BAU activity;
* developing a sound and consistent approach to proactive release procedures and decisions; and
* ensuring there is management accountability for its delivery, particularly when this forms part of an agency’s published, corporate strategy.

A thorough guiding policy for the proactive release of information can also facilitate a consistent approach to the release of information between business units, and help to manage the risks of proactively releasing information.

One initial staff survey respondent considered there to be a ‘*gap around guidance on proactive release*.’ They said:

*I think there may be some risk aversion since the OIA doesn't apply to this material (both in terms of its principles and legal protections for good faith execution of duty). …*

As it stands, Te Tāhū lacks a full and clear policy to support its practice and, crucially, to promote accountability and consistency in the proactive release of information. I encourage Te Tāhū to revisit the OIA proactive release document to ensure it is fit for purpose and to prioritise the drafting of an overarching a proactive release policy. Te Tāhū may find my [guide](https://www.ombudsman.parliament.nz/news/new-guide-proactive-release) on proactive release useful when reviewing its practices. I also encourage Te Tāhū to publish any proactive release policy on its website.

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| **Action point** |
| Finalise and publish a comprehensive proactive release policy. |

* + 1. Information management systems

An agency’s capability to discharge its official information obligations is often dependent on establishing and maintaining effective systems for information management and record keeping. The initial staff survey results indicate that approximately 46 percent of respondents consider it ‘*very easy*’ or ‘*somewhat easy*’ to use Te Tāhū’s information management system. However, approximately 33 percent of initial staff survey respondents considered there to be several information management systems in use at Te Tāhū and it is not clear how or for what type of information each system should be used.

Some of the information management systems used at Te Tāhū include:

* Te Kete – Te Tāhū’s enterprise content management system. The first tranche was ‘rolled out’ in 2017/18;
* JAX – a correspondence and workflow database;
* shared hard drive systems; and
* other systems depending on the work area.

In 2017, Te Tāhū advised that Te Kete would be implemented in a staged approach from late 2017 until 2019. However, at least one initial staff survey respondent said that it was still being trialled in their area. The respondent said:

*My answers relate to Te Kete which Te Tāhū is trialling in my … area as a records management/information management tool. It's terrible.*

A signiciant number of initial staff survey respondents identified information management systems as an issue. A number of staff commented that the resources are not adequate to store and retrieve information for OIA requests. An example of some comments include:

*They do not have adequate resources to store information in accessible way, so when an OIA request comes in they scramble to get the right information. I would think the requester often do not receive the information sought.*

*We still have issues where we would like to be more open but are limited by our IT systems and information management protocols*

A common theme in the comments was that there are multiple systems that are ‘*disparate and disconnected*’ and there is ‘*no searchability across various separate data stores’*. An example of some initial staff survey comments include:

*There are multiple drives and systems, access is limited to the business group or unit, or team.*

*There are several systems in use for different types of information – it is not clear how/for what type of information each should be used - and access to certain types of systems are limited to who can access them due the age of the system or the information contained. There is no proper centralised EDRMS, schema or file naming and metadata isn't used in most areas.*

*We have one of the most old fashioned and clunky IT systems I have ever worked with. It's the biggest barrier we have to being able to identify what information we hold.*

An inadequate information management system was identified as an issue during the 2020 lockdown. This is discussed further below in [*OIA practices during the 2020 lockdown*](#_OIA_practices_during). Te Tāhū stated in the post-2020 lockdown agency questionnaire that some responses had to be extended until staff were able to re-enter the office and search through either physical files or shared drives. Additionally, Te Tāhū said that ‘*undertaking searches across email inboxes using webmail or remotely was often slow with the search timing out*’.

The impact of this type of practice on agencies ability to meet its obligations under the OIA is obvious. If documents are not stored correctly or able to be retrieved easily, OIA requests will not be responded to in an accurate or fulsome manner. I urge Te Tāhū to consider the feedback from staff members on its information management systems and conduct a review to ensure the best system is in place. I also suggest Te Tāhū ensure adequate training and written guidance is available about the information systems it uses (see [*Information management guidance*](#_Information_management_and_1) *and training*).

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| **Action point** |
| Review information management system to ensure it enables compliance with the OIA. |

* + 1. Information management guidance and training

Comprehensive guidance and training around information management assists staff to process OIA requests in accordance with the Act. Clear policies and guidance helps ensure information falling within the scope of a request is able to be identified and retrieved.

Te Tāhū has a Data and Information Policy, which replaced a Records Management Policy in 2018. Te Tāhū advised it was being updated in 2020 and engagement was undertaken to both refine the policy and inform new guidance. The policy outlines Te Tāhū’s six information management (IM) principles which are:

* principle 1: information is a core strategic asset
* principle 2: information is trusted, authoritative and easy to use
* principle 3: information is respected and transparent
* principle 4: information is protected
* principle 5: information is open by default while privacy is maintained
* principle 6: information relating to the courts is treated appropriately.

It is a good overarching policy document and I am pleased the policy has clearly assigned responsibilities relating to the creation, capture and management of data and information and records when the policy is updated. Te Tāhū stated that the policy is operationalised by utilising a ‘data and information impact assessment’[[34]](#footnote-35) and a corresponding ‘data and information assessment report’.[[35]](#footnote-36) This process allows Te Tāhū to consider information management on a case-by-case basis, assessed against individual projects.

I commend Te Tāhū for this approach on information management and the way it considers information management in a tailored way for each project. I am pleased the policy and corresponding guidance includes information on the security of information; retaining, retrieving and disposing of records; and assigned responsibilities and performance criteria for records and information management by staff. However, there is, to my mind, some further material that Te Tāhū should include in its information management guidance. Some initial staff survey respondents also indicated that increased guidance around information management would be beneficial. One initial staff survey respondent said:

*There is no clarity about how we should save / retrieve information. With the lack of a comprehensive electronic record management system, each individual user can save information in a personal H drive that is not shared and therefore no-one else can have access to it. Information can be deleted from any of the drives - shared or individual, and there is no audit trail to show what has happened.*

Te Tāhū should consider including further guidance on creating, organising, maintaining and storing records; and managing and modifying records. In addition, as discussed in the section above, [*Information management systems*](#_Information_management_systems), a guide to determining which records systems exist and what information each system holds may be of use to staff. A number of staff provided feedback in the initial staff survey that it is not clear how or for what type of information each system should be used.

Further guidance on the management of both manual and electronic records, including personal email accounts, text messages and instant messaging platforms such as Microsoft Teams, would be useful. As outlined in [*Email*](#_Keeping_a_record) *record keeping* below, it appears that staff have been storing emails in personal mailboxes instead of network drives, which makes the retrieval of documents difficult when the staff member leaves the organisation. It would also be advisable to include information about the auditing of records in the policy or guidance document.

The initial staff survey indicates that 63 percent of respondents consider the policy and guidance on information management or record keeping to be ‘*very easy*’ or ‘*somewhat easy*’ to find and 59 percent said they considered it ‘*very easy*’ or ‘*somewhat easy*’ to understand the information. Comments from respondents to the initial staff survey about the information management guidance were mixed. One said:

*All our policies and guidance are kept on our Intranet in an easily findable location, it is however up to the individual to read them…*

I am pleased Te Tāhū said the policy is on a ‘*fast refresh cycle of 12 months due to a number of changes in the data and information environment’* and that information management has been discussed on Te Tāhū’s intranet in order to raise staff awareness. I am also pleased that Te Tāhū has an ICT Data and Information team that provides support and guidance to staff on information management issues.

I commend Te Tāhū for developing a new online training module in the first half of 2020, which corresponds with the Data and Information Policy. The training includes modules on data and information roles and responsibilities; policies and principles; managing high quality information; and the data and information lifecycle. The new online training modules were developed to support the induction programme and to be used as refresher training to all staff. The training includes a good overview of Te Tāhū’s data and information policy, including the six information management principles outlined above. I am pleased the online training includes practical examples and engaging material such as quizzes.

Currently training tends to be provided to staff within a business group as they identify it is needed. The training is not compulsory to all staff and I am concerned that Te Tāhū stated that only approximately 15 percent of staff members have completed the training.[[36]](#footnote-37) Of the staff members who completed the initial staff survey, only 50 percent said they had completed record keeping or information management training in the last two years. Also, 31 percent of staff said they had never completed training of this type. This is a high number of staff that had not completed training in comparison to the twelve agencies surveyed for the *Not a Game of Hide and Seek* investigation. One initial staff survey respondent said:

*I believe training is not broad enough and insufficient. Greater education is required about holding, storing, protecting and using data to prevent leakage and breaches.*

I encourage Te Tāhū to consider reviewing its training to ensure it is providing sufficient information to staff on information management and record keeping to ensure they are adhering to the Public Records Act 2005 and the OIA. I also urge Te Tāhū to consider including in its guidance the points outlined above to ensure its guidance around information management and record keeping is comprehensive and of maximum benefit to staff.

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| **Action point** |
| Review and update information management guidance and training to incorporate my suggestions. |

# Current practices

The effectiveness of the OIA is largely dependent on those who implement it on a day-to-day basis and how they apply the resources available to them to manage the realities of giving effect to the Act.

To assess agencies’ current practices, I considered whether:

* the agency’s official information practices demonstrate understanding and commitment to the principle and requirements of the OIA;
* the agency’s staff have a good technical knowledge of the OIA; and
* the agency is coping with the volume and complexity of requests, and decisions are compliant.
  + 1. OIA practices

To gain an understanding of how Te Tāhū processes requests, my investigators reviewed a random selection of OIA request files. Overall, Te Tāhū’s processing is good, but some inconsistencies were identified.

It is positive that the progress on OIA requests is tracked and maximum statutory timeframes were usually adhered to (see [*Reported OIA timeliness*](#_Reported_OIA_timeliness)). Correspondence was generally of a high standard and details to complain to the Ombudsman were included when reviewable decisions were made.

In addition, Te Tāhū has some excellent initiatives, such as providing counselling sessions to staff to discuss the processing of sensitive OIA requests. One challenge for staff members processing OIA requests is that the subject matter is often complex and may include distressing content. For instance, OIA requests can be for information on subjects such as abortion, domestic violence or hate speech. I am pleased Te Tāhū said the Ministerial Relations and Services team has ‘*team diffusing sessions’*, which are group supervision counselling sessions that take place every second month and are facilitated by a trained counsellor. A meeting attendee said these sessions are useful to provide another perspective and advice on how to cope with exposure to distressing content. The specifics of the sessions are kept in confidence, but a high-level report is provided to the management team on issues that may require follow up. This is an excellent initiative and one that other agencies should consider adopting. The wellbeing of staff dealing with distressing material should be a priority for all agencies processing these types of OIA requests.

There were also some vulnerabilities identified in Te Tāhū’s OIA practice that may require improvements. A number of meeting attendees discussed the challenge of dealing with an increased number of OIA requests. One meeting attendee said there was an unexplained 10 percent increase in OIA requests in 2019 and it had been difficult to chase up responses from some individuals in business units. Another meeting attendee said that a number of high profile events such as the court hearing related to the Christchurch mosque shooting, reforming the criminal justice system and referendums on contentious issues increased the number of requests. The way Te Tāhū dealt with the increased volume of OIA requests produced by these events was by employing fixed term contractors and ‘*pulling*’ people from other teams such as processing units or frontline staff.

As discussed in [*Model for handling OIA requests*](#_Model_for_handling), the Ministerial Relations and Services team commenced in mid-2020, with an increase in staff numbers. Te Tāhū said the larger team size now ‘*gives us much better resilience for coping with influxes of requests*’. New OIA requests can now be allocated across ten staff members, which is more manageable than the previous three staff members dealing with OIA requests. Te Tāhū has also introduced some new methods to help manage ‘*peaks or clusters*’. For instance, there are now consistent processes and templates, including an information sheet to accompany all OIA responses, and there are ‘*primary contacts*’ in the team to deal with some of the more difficult subject matter. This has led to requests being answered consistently and as quickly as possible.

A number of other issues were identified from the review of the sample OIA files, including:

* In one case, a Ministry staff member consulted with a third party about releasing certain information. The email said ‘*we are able to withhold all or some of the response if you have concerns about releasing it*’. However, this is not necessarily the case. The views of the individual about the release of material is one factor to consider when withholding information, but a number of other factors should also be considered. Ultimately it must be the agency, and not the third party, who makes the decision on whether to release information in response to an OIA request.
* There was little evidence of what public interest factors favouring release had been identified and what weight they were given, when deciding to withhold information pursuant to section 9 of the OIA. The decision letters of those with information withheld under section 9 stated ‘*I do not consider that the reasons for withholding the information are outweighed by any considerations that render it desirable, in the public interest, to make the information available’*. However, this sentence appeared to be standard wording and it was not otherwise evident that clear consideration took place on each occasion. My guide [*Public interest: A guide to the public interest test*](https://www.ombudsman.parliament.nz/resources/public-interest-guide-public-interest-test), provides useful information on this issue.
* According to the coversheet included in some of the OIA request files, a quality assurance process had taken place as there is space for the peer review to sign and date. However, it is not clear what the peer review process entailed and no details were recorded of the process that took place. This issue is discussed further below in [*Quality measures*](#_Quality_measures).

A number of record keeping issues were also identified in relation to OIA requests. For instance, one meeting attendee said they rely on ‘*people’s knowledge of where stuff is filed*’, and there is some inconsistency with filing. They said the team relies on institutional knowledge and expressed concern about what happens if the knowledgeable person leaves. Other record keeping issues from the OIA request files, include:

* Searches for information requested under the OIA occurred by emailing people in relevant program areas. Some emails were saved in the sample OIA files, but not all.
* Emails and key letters appeared to be saved but there were no records of telephone conversations or meetings.
* A number of blank OIA coversheets were included in the OIA files that were not completed.

Keeping full and accurate records in an accessible form is important to ensure decisions are able to be reviewed by the Ombudsman, if a complaint is made and to ensure compliance with the Public Records Act 2005.

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| **Action points** |
| Ensure OIA decision makers consider and record the public interest test where applicable. |
| Amend OIA record keeping practices, to ensure:   * a record of the search for OIA request documents is kept; * substantive correspondence is created and maintained such as telephone conversations, meetings, verbal discussions and extension letters; and * coversheets are completed and saved in every instance. |

* + 1. Email record keeping

As outlined in [*Information management systems*](#_Information_management_systems_1), Te Tāhū has a correspondence database called JAX. However, I am concerned that the storage of emails is not a strength for Te Tāhū. One meeting attendee said there is not a central email storage system, which can be an issue when people leave Te Tāhū.

Acknowledgement letters or emails were requested by my investigators as part of the OIA sample file review. Although Te Tāhū said the Ministerial Relations and Services team does routinely and automatically send acknowledgements, the requested acknowledgement emails were not easily accessed. Te Tāhū said the emails could be supplied, but there were technical issues and it would come at a cost to access the emails.

Te Tāhū said the usual process is to acknowledge OIA requests from the OIA team’s mailbox and save the emails in JAX. However, in the cases requested, the emails were not saved in JAX and although an audit of the OIA team mailbox was undertaken, the acknowledgement emails could not be located. Te Tāhū said it believed the acknowledgements were sent by a team member who had left Te Tāhū and they would be in the individual staff member’s mailbox. Te Tāhū said the acknowledgement emails from the file samples were not saved because there were ‘*operational issues*’ during the 2020 lockdown and the person who was usually responsible for logging and acknowledging requests was redeployed to the National Incident Management Team. Te Tāhū said ‘*it was a one off and unique circumstance*’.

While I acknowledge the unique circumstances surrounding the 2020 lockdown, a number of OIA files requested for the sample file review were requests received prior to the lockdown. The acknowledgement emails corresponding to these OIA requests were also not supplied when the OIA sample files were requested. This indicates there may be an issue with the practice of keeping a record of key correspondence such as acknowledgement emails.

The same issue was evident in the practices of the Communications Services team, which I will discuss further under [*Media information requests*](#_Media_information_requests). An example was identified in the media file sample review where a response emailed to a requester could not be provided to me because it was kept in the Media Advisor’s sent items mailbox. Because the staff member had subsequently left Te Tāhū, the email could not be retrieved. Staff confirmed that it was not unusual for emails only to be kept in mailboxes rather than stored in a centralised records management system.

In addition, some initial staff survey respondents raised a record keeping issue in relation to emails. The staff survey respondents said they had been advised to permanently delete all emails stored in their ‘deleted’ folders after 60 days. One respondent said *‘I am concerned that some of these permanently deleted e-mails may in future need to be accessed under the OIA requests*’. Another respondent said staff had asked about how this change would impact on requests for emails under the Privacy Act and OIA and they were informed that emails should be moved to another folder and not in the ‘deleted items’ folder. However, the respondent was concerned that ‘*if the legislation allows for more than 60 days to respond to a request, this policy would effectively override that and impose its own - reduced - timeframe*.’

While there may be no issue with permanently deleting emails which are ‘*facilitative, transitory, and/or [of] short-term value*’ in accordance with an established disposal authority,[[37]](#footnote-38) Te Tāhū must ensure staff save business records, including key emails, into a shared network before deleting them from email storage.

Any information Te Tāhū holds, including emails, could be requested under the OIA. As a public agency Te Tāhū must ensure its record keeping is scrupulous in order to ensure that all information within the scope of a request is accessible. It is important to ensure that documents relating to the OIA process, including acknowledgement emails, are recorded correctly. An additional benefit of sound record keeping practices is that it allows Te Tāhū to explain to an Ombudsman in the context of an investigation why it came to a decision on a request at the time it was made.[[38]](#footnote-39)

If documents are not stored in a record keeping system, staff may not be able to identify, access and collate information that has been requested under the Act. As a result, all information within the scope of a request may not be identified and reviewed before Te Tāhū makes and communicates its decision to a requester.

Therefore, it is my opinion that Te Tāhū appears to have acted contrary to law in relation to sections 17(1) and 17(2) of the Public Records Act 2005 which, respectively, require Te Tāhū to:[[39]](#footnote-40)

* create and maintain a full and accurate record its affairs; and
* maintain records in an accessible form to enable use for subsequent reference.

However, I will not make a recommendation in this instance as Te Tāhū, in its response to my provisional opinion, has outlined a number of steps it has taken, and which were underway concurrent with my investigation, to improve ‘its ability to meet the requirements of the Public Records Act 2005 and the Information and Records Management Standard issued by the Chief Archivist.’ These include:

* development of an Information Strategy 2020-2023;
* piloting a new IM system;
* improving email archiving systems; and
* developing a centralised register of information assets.

I have instead suggested as an action point that Te Tāhū amend its record keeping practices to ensure full and accurate records are created, maintained and stored accessibly. I look forward to following its progress in the coming months.

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| **Action points** |
| Amend Te Tāhū’s record keeping practices to ensure full and accurate records are created, maintained and stored accessibly. |
| Amend record keeping practices to ensure business records, including OIA acknowledgement emails and other key emails, are saved in a shared network. |

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| **The Ministry’s response**  Te Tāhū stated that only a small number of examples of poor practice were identified and it stored ‘*hundreds of thousands of documents, and thousands of interactions between officials’*. It said that it would be *‘concerned if this was elevated to a finding of unlawfulness*.’ Te Tahu noted that it has been progressively improving its ability to meet the requirements of the Public Records Act 2005 and in its last audit by the Chief Archivist in 2015, the Chief Archivist said its recordkeeping was developing in line with best practice.  **My comments:**  My Office did not review hundreds of thousands of Te Tāhū’s documents; only a small number of sample files were required for the purpose of my investigation yet, within the sample, numerous examples of insufficient record keeping were identified. In addition, my finding is based on the views and experiences of staff, some of whom expressed concerns with Te Tāhū’s record keeping practices around email correspondence, and confirmed that practices around keeping emails in mailboxes rather than in shared drives, were not uncommon.  Accordingly, I am not persuaded to depart from my provisional opinion that the Ministry appears to have acted contrary to law in relation to sections 17(1) and 17(2) of the Public Records Act 2005. However, as detailed above, I have not made a recommendation in this instance. |

* + 1. Reported OIA timeliness

The Public Service Commission publishes OIA statistics every six months.[[40]](#footnote-41) The following table demonstrates the reported percentage of OIA requests completed by Te Tāhū within the maximum statutory time limit.

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| Financial year | Requests received | OIA requests completed within legislated timeframe |
| 2015/16 | 887 | 96 percent |
| 2016/17 | 918 | 94 percent |
| 2017/18 | 903 | 92 percent |
| 2018/19 | 988 | 97 percent |
| 2019/20 | 790 | 91 percent |
| July 2020 – Dec 2021 | 425 | 94 percent |

The Chief Executive has said that Te Tāhū’s timeliness was not acceptable for the 2017/18 financial year and Te Tāhū was ‘*actively monitoring performance and compliance at a Strategic Leadership Team level*’. He said this started in early December 2017 and was set to ‘*continue until I am satisfied that our compliance rate has returned to an acceptable level*’. The reported statutory timeliness rate did improve in the 2018/19 financial year, but dropped again in 2019/20 due to COVID-19 and the difficulties the lockdown posed for processing OIA requests. The statutory timeliness rate dropped dramatically in the first half of 2020, the number of requests completed in the statutory timeframe from January to July 2020 was 86.5 percent. There were a number of reasons for this, which are discussed below in [*OIA practices during the 2020 lockdown*](#_OIA_practices_during), including a lack of access to technology.

Te Tāhū said the more centralised (or mixed) OIA team is able to identify and escalate OIA timeliness fluctuations more quickly. As discussed in [*Collection, analysis and reporting of OIA data*](#_Collection,_analysis_), the Ministerial Relations and Services team reports to the Deputy Secretary for Strategy, Governance and Finance on a weekly basis.

I note the statistics above do not identify the number of OIA requests which have been extended within the statutory due date. Te Tāhū was asked for statistics showing the number of OIA requests it extended. As outlined in [*Collection, analysis and reporting of OIA data*](#_Collection,_analysis_) below, Te Tāhū does record whether a request has been extended and the new extended due date, but it does not keep a record of the reason for the extension. This information is required in order to determine if the extension is justified by the nature and complexity of the request.

Prior to Te Tāhū moving to a mixed model, one meeting attendee said there were some ‘*self-service units who are not the best at timeliness*’. They said the weekly ‘*due and overdue*’ report had stopped in January 2020, but had recommenced in late 2020. However, they also commented that a report should not be required to ‘*tell you when things are due and overdue’*. As discussed in [*Collection, analysis and reporting of OIA data*](#_Collection_,_analysis), Te Tāhū’s workflow tool allows it to monitor compliance with the maximum statutory timeframes, as well as some additional information.

Some other initiatives have commenced to address the timeliness issue. One meeting attendee said that when they returned from the 2020 lockdown, they started a weekly ‘*drop-in*’ where service units could seek advice from Ministerial Relations and Services. The meeting attendee said there had been ‘*great enthusiasm initially but it has dropped off*’, but they continue to repeat the message to staff that there should always be ‘*100 percent timeliness*’.

* + 1. Proactive release of information practices

The proactive release of information to the public promotes good government, transparency and fosters public trust. As discussed in [*Proactive release policy*](#_Proactive_release_), Te Tāhū has only recently started proactively publishing OIA responses. The Public Service Commission website states that Te Tāhū published two OIA responses from January to June 2021.

The low number of responses released so far may be due to a number of reasons. There may be some reluctance from some staff about publishing this material. Te Tāhū said OIA advisors discuss with ‘subject matter experts’ in the relevant business area whether the OIA response can be proactively released or not and it has been a culture shift for some. Further, as outlined in [*Proactive release policy*](#_Proactive_release_policy)*,* Te Tāhū’s guidance on the proactive release of OIA requests indicates that only the requests for information received by the media or on the ‘FYI’ website are considered for publication.

Te Tāhū releases a variety of other information proactively, including:

* Some Cabinet papers.[[41]](#footnote-42)
* The impact of the COVID-19 lockdowns on the courts.[[42]](#footnote-43)
* Survey information, legal aide information and information on referendums.[[43]](#footnote-44)
* A range of commonly requested statistics on a range of justice-related matters.[[44]](#footnote-45) These include statistics on specific offences (homicides, sexual offences, family violence offences, harmful digital offences, drink driving offences, and drug, cannabis and methamphetamine offences).

There are also statistics about specific justice processes (discharges without conviction, unfit to stand trial, not guilty on the grounds of insanity, name suppression, three strikes offences) and Family Court matters (adoptions, protection orders). Te Tāhū said that unlike the statistics published by Statistics New Zealand, these data tables combine both youth and adult information allowing readers to gain a complete overview of offence data. Where possible, this information has been broken down by Courthouse to allow readers to access information by specific geographical areas.

The Chief Executive considers the information released proactively by Te Tāhū to be ‘*quite substantial*’. Some staff have a different view, one respondent from the initial staff survey said:

*There is a lot of 'talking the talk' about its importance, but (at least within the Policy Group) less willingness to actually walk the walk and be bold and proactive. …*

Some staff survey responses considered that the COVID-19 pandemic may have improved the proactive release of information. An example of some comments to my post-2020 lockdown survey included:

*We proactively released data and content relating to the courts' performance during COVID.*

*Proactively releasing information relating to the courts was really good - data and context as the "backlog" being caused by lockdown was in the public interest. Reporters also had an appreciation for why a response to their request may be delayed - in the media team I made lots of phone calls to reporters to discuss their requests and they appreciated the difficulty of people working from home etc as they were in the same position.*

I urge Te Tāhū to increase the number of OIA responses it proactively publishes. Te Tāhū should consider broadening the scope of OIA requests eligible for public release. Senior leaders should encourage and support staff to aid transparency by publishing as many OIA responses as possible.

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| **Action point** |
| Consider broadening the scope of OIA requests eligible for public release. |

* + 1. OIA practices during the 2020 lockdown

It appears Te Tāhū had a number of challenges maintaining its obligations under the OIA during the 2020 lockdown, including:

* mixed information from leaders about the prioritisation of OIA requests;
* difficulties with technology and resources, including a lack of laptops;
* inability to gain access to hardcopy documents and issues with the electronic records management system; and
* a lack of staff or resourcing to process requests.

I am concerned a number of staff said that when the 2020 lockdown was initially announced, there were mixed messages about Te Tāhū’s OIA obligations. It is my understanding that this is likely to have stemmed from cross agency discussions that occurred at the start of the pandemic regarding the likelihood that OIA requests may not be able to be prioritised in a ‘worst case scenario’. I cannot stress enough that when routine practices are disrupted (such as during the COVID-19 lockdowns where the Government was exerting extraordinary executive power), compliance with OIA obligations is essential in order to maintain transparency, accountability, and the public’s trust in Government. It is problematic that some staff considered they were receiving mixed messages about their responsibilities under the OIA. An example of comments from the post-2020 lockdown staff survey include:

*Right before the lockdown, our General Manager told our unit … that our responsibilities under the OIA were likely to be suspended during the lockdown - this seemed unusual to me as it did not align with the principle of open Government. It was especially unusual seeing as Justice administers the OIA Act.*

*The guidance given to us was confusing and contradictory. We were initially told to place all OIA work on hold, and then we were told to extend all new OIA's, and then we were told we needed to continue working on them as much as we could.*

*… Advice on whether the standard timeframe of response had shifted due to lockdown and other priorities …*

One meeting attendee said ‘*The messaging was there. I recall people asking “has the OIA stopped?” and my answer was “no!”’* However, it appears that after a short time, staff were receiving a cohesive message from the Chief Executive and senior leaders that OIA requests were still being considered. I am pleased that this was the outcome and would appear to demonstrate not only that Te Tāhū determined that a de-prioritisation of OIA obligations did not form a part of its strategy over the lockdown, but also the vital role leaders have and the impact of their messaging within an organisation.

Another area of vulnerability for Te Tāhū was its technology capabilities during the 2020 lockdown. Approximately 57 percent of staff surveyed said they had adequate resources to fulfil their role in relation to the OIA during lockdown. Te Tāhū ranked lowest for this question of all the twelve agencies surveyed in the *Not a Game of Hide and Seek* follow up investigation. This is of concern because if staff do not having adequate resources to work from home, Te Tāhū cannot ensure it can meet its obligations under the OIA.

Te Tāhū was asked if any vulnerabilities in the OIA process were exposed during the 2020 lockdown:

*…Te Tāhū’s ability to respond to OIA requests was primarily affected by the provision of computer technology. Searching for information during the lockdown was affected by Te Tāhū not having an enterprise-wide document management system. ...*

During the 2020 lockdown, Te Tāhū said five staff in the Ministerial Relations and Services team had laptops and only three staff were working full time from home. A number of staff raised the lack of resources as an issue for them during the 2020 lockdown in my post-2020 lockdown staff survey. An example of some of the comments include:

*For a large part of the lockdown period most of the organisation did not have access to laptops or Te Tāhū networks - documents being worked on were stored on personal devices until they could be moved to Te Tāhū network*

*For the first month, I didn't have a Ministry laptop or access to Te Tāhū filing system. Once I received a laptop I could access all materials and perform all tasks.*

I understand it was a difficult time. I also acknowledge the staff that worked to provide hardware and technology during this time. One survey respondent said:

*The IT team worked extremely hard to provide laptops and allow access to Ministry systems to a large audience in a very short space of time to permit general BAU (including OIA requests) to resume as soon as possible. …*

I am pleased that a meeting attendee stated that there is currently a ‘*Modern Workforce Programme*’ in which every staff member at Te Tāhū is receiving a laptop. Since commencing this investigation New Zealand has been in another level 3 and 4 lockdown. When asked if Te Tāhū had adequate resources to cope with OIA responses during the 2021 lockdown, Te Tāhū said it was much better prepared in terms of technology. However, it is apparent there is still some way to go, as only 50 percent of staff in the Ministerial Relations and Services team had a laptop which enabled them to access Ministry systems and information.

Staff members also reported in the post-2020 lockdown survey that they were unable to access Te Tāhū’s IT network in order to retrieve relevant documents to answer OIA requests. One respondent to the post-2020 lockdown staff survey said:

*Our lack of a document management system didn't help but that is also the case outside of COVID-19 times.*

Having adequate resources and systems to allow staff to work from home ensures Te Tāhū is able to meet its obligations under the OIA and I urge Te Tāhū to continue to develop its technology capabilities, in order to ensure efficient processing now and into the future.

One meeting attendee said Te Tāhū is ‘*reliant on paper*’. When an OIA request is received and logged, a paper file is created which includes the request, coversheet and other relevant papers. It is then ‘*delivered to the pigeon hole of the unit*’. This process was problematic during the 2020 lockdown as staff did not have access to paper documents or files. A number of respondents to the post-2020 lockdown survey said the whole system was moved to electronic, including email sign out, instead of physical sign off. However, when staff are not in lockdown, sign off is conducted manually, rather than by email.

There may be a case to move to an electronic system to increase efficiency generally, and for the ability to continue to work during times such as lockdowns or emergencies. A meeting attendee said that the administration of paper files takes extra time, for instance to print paper documents, put tags on files, to scan paper copies into the electronic system and for people to sign out paper versions. They said ‘*this happened a lot quicker when we were working electronically. It was so efficient*’. A meeting attendee considered the culture at Te Tāhū favoured paper-based methods. However, Te Tāhū has advised it now uses a mix of paper-based processing and electronic processing. I consider that Te Tāhū may be better served by moving to a fully electronic system.

Staff also noted concerns about resourcing of the Ministerial Relations and Services team during this time. One respondent to the post-2020 lockdown survey said:

*I know the Official Information team (Ministerial relations Services) teams were hugely under resourced during this time due to limitations on staff in that unit being unable to work due to other commitments, OR did not have the equipment to allow them to do this. …*

Shortly before the 2020 lockdown, a new team leader was appointed in the Ministerial Relations and Services team. One member of the team was seconded to the National Incident Management Team full time, but continued to log OIA requests. A meeting attendee said it was ‘*quite a tricky time’* but it was fortunate that the new team leader had OIA experience.

Te Tāhū received fewer OIA requests than the same period in the year before and I have seen no evidence of requests being refused due to Te Tāhū’s inability to retrieve paper documents or other, similar administrative challenges. A number of post-2020 lockdown staff survey comments suggested that if a request was unable to be processed during the 2020 lockdown, Te Tāhū may have been inclined to extend the request, rather than refuse it. However, when asked about the number of OIA requests extended during the 2020 lockdown compared to 2021, Te Tāhū said there was not a significant increase in the number of OIA requests extended. This issue is discussed in [*Collection, analysis and reporting of OIA data*](#_Collection,_analysis_) below.

Overall, as outlined, staff expressed there were many difficulties over the first lockdown period. It is noteworthy though, that some staff were impressed at how people ‘*stepped up*’ to complete OIA requests.

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| **Action point** |
| Review OIA practices during the 2020 and 2021 lockdowns to ensure Te Tāhū can meet its obligations under the OIA should a lockdown or emergency occur in the future. |

* + 1. Ministerial interactions on OIA requests

Te Tāhū’s OIA policy and its Ministerial Relations and Services process guides include some detail on Te Tāhū’s interactions with Ministers’ offices on departmental OIA requests. The section of the policy dealing with Ministerial interactions includes some important aspects I consider a Ministerial protocol should cover. For example, the policy distinguishes between notification and consultation, stating that *‘(a) notification…is not the same as consultation and should not unduly delay the release of information*.’ Where consultation is required, the policy states that ‘*(t)he Ministry will be clear it is consulting rather than providing the request for the Minister's information, and sufficient time will be given for the Minister's office to raise any concerns about the proposed decision.’*

The policy clearly defines which party is responsible for making decisions on departmental OIA requests, stating that ‘*Te Tāhū will have regard to any feedback, but the decision on how to respond to the request must be made by Te Tāhū in accordance with the Act.*’

The process guide also distinguishes between consultation and ‘*fyi*’, briefly outlining the ‘*no surprises*’ principle that requires departments to inform Ministers promptly of matters of significance within their portfolio responsibilities, particularly where these matters may be controversial or may become the subject of public debate.[[45]](#footnote-46) On the topic of consultation, the guide accurately states that *‘if questions relate to what are, fundamentally, fairly operational matters, it is not necessary for the Minister’s office to be consulted.’*

Te Tāhū provides the Ministers’ offices with a list of OIA requests on-hand, fortnightly. From this, Ministers’ offices select those responses they wishes to see as an ‘*fyi*’, and which they consider to require consultation. I am advised by Te Tāhū that the majority of OIA responses that are sent to Ministers’ offices are sent for Ministers’ information only; consultation is rarely required.

Te Tāhū advised that *‘fyi’* responses are sent to Ministers’ offices only after they have been sent to the requester. I consider this to be excellent practice. Sending departmental OIA responses to the requester shortly before or at the same time they are provided to the Minister on a ‘no surprises’ basis means that Te Tāhū does not, through its Ministerial ‘*no surprises’* notification process, breach its statutory obligation to make and communicate a decision ‘*as soon as reasonably practicable*’.

I consider that Te Tāhū’s reported interpretation of the *‘no surprises’* principle in relation to providing responses on an ‘*fyi*’ basis to Ministers, represents the true intention of that principle. I commend Te Tāhū for its strong practice in this area. In order to safeguard its excellent practice, as it was described to me, I strongly encourage Te Tāhū to ensure that it is codified in its policy and guidance.

Currently, the policy/guidance is clear that proposed departmental OIA responses that require Ministerial *consultation* should be provided to the Minister’s office five days in advance of the date it is ‘due’ to the requester (based on the maximum statutory time limit of 20 working days). However, the timeframe in which responses should be sent to Ministers’ office as an ‘*fyi*’, is not set out clearly in policy or guidance. The guidance states that *‘…if the request could result in a story or public scrutiny, the Minister’s office should be informed – i.e. send them a copy of the proposed response before it’s released in accordance with the ‘no surprises’ approach.’* This does not set out a clear timeframe for providing the response to the Minister’s office, and it appears to be somewhat at odds with the practice as it was described to me, which is to send responses to Ministers’ offices *after* they have been sent to the requester. This should be clarified, ensuring that Te Tāhū’s practice, policy and guidance are in alignment.

Te Tāhū’s guiding materials on Ministerial interactions could be further enhanced by including or clarifying:

* what factors would cause the agency to consider a request to be ‘of interest’ to the Minister;
* the process in the event the Minister’s office wishes to raise concerns with the agency during a consultation;
* the timeline for providing responses to the Minister’s office, distinguishing between consultation and *‘fyi’*; and
* the process when the Minister’s office is unable to respond to a consultation within the statutory timeframe to respond to the requester.

Ideally, Ministerial guidance would be discussed and agreed with Ministers’ offices.

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| **Action points** |
| Review and update written guidance on Te Tāhū’s interactions with Ministers’ office on departmental OIA requests incorporating my suggestions to ensure practice and written resources are in alignment. |
| Ensure the guidance on Ministerial interactions is discussed and agreed with the Minister’s office. |

* + 1. Media information requests

Te Tāhū’s media practices are guided by a media policy, which it provided to me as part of this investigation. The policy contains a small section about the OIA. In its entirety this section states:

*Official Information Act requests from the media (including bloggers and the FYI website) should be directed to the Media Team and the Official Correspondence Team*.

*The Media Team acknowledges receipt of the request from the media. After the appropriate business unit has prepared a draft response the Media Team will assess it for matters of context and readability. Once the approved response has been through its approval processes, the Media Team will send the response to the reporter and deal with any follow up questions.*

I note that the policy contains no information about how to differentiate between an OIA request and a request to which the OIA does not apply, for example a request for Te Tāhū to generate a comment on an issue. Nor is there any information about Te Tāhū’s need to adhere to its statutory obligations when handling media information requests to which the OIA does apply. There would be considerable merit in Te Tāhū bolstering this section—or developing guidance for staff in the media team—to ensure it is very clear:

* how to recognise an information request and differentiate it from other kinds of requests which might be received from the media;
* when or whether requests from the media should be referred to the Ministerial Relations and Services team;
* the statutory obligations under the OIA that may be particularly relevant to the type of information requests handled by the media team.[[46]](#footnote-47)

The team that deals with requests from the media is the Communications Services team. As part of my investigation, I reviewed a sample of files showing the Communications Services team’s handling of information requests. I was very pleased to see some excellent practices from the media team in their helpful exchanges with members of the media. In the examples I saw, the media team engaged with requesters in order to understand the information they needed, and assisted them to tailor their request accordingly. This aligns with the requirement under section 13 of the OIA to give reasonable assistance to requesters.[[47]](#footnote-48)

I was impressed with the way the Communications Services team appears to work with the Ministerial Relations and Services team to handle complex requests for information. In an example I saw, a complex information request from a journalist was transferred to the Ministerial Relations and Services team to guide the process and to draft a response, yet the media advisor remained as the contact person for the requester which, I have no doubt, created a more seamless experience for them.

The Communication Services team’s record keeping practices appear somewhat inconsistent. In most of the cases I saw, it appeared that records were kept of email exchanges between Te Tāhū and requesters. However, as I discussed earlier under [*Email record keeping*](#_Email_record_keepingKeeping), I saw an example where a response emailed to a requester could not be provided due to a practice—which Te Tāhū advised my investigators was not unusual—of storing emails in individuals’ mailboxes rather than within a centralised system. The response could not be accessed because the staff member had left Te Tāhū.

I also saw a file in which there was reference to a telephone discussion for which no file note was provided. Staff indicated to my investigators that it was not a typical practice of the Communications Services team to make file notes of telephone discussions with journalists.

In this example, the email referring to the agency’s telephone discussion with the requester confirmed that the agency would ‘*close the OIA’*. With the lack of detail in the email and the lack of a file note, it is unclear whether the request was ‘*closed*’ because the requester withdrew it, or because Te Tāhū refused the request (and, if so, on what basis). In the context of media requests for information, I expect that a full and accurate record of the request submitted and the information provided by the agency in response should be kept, along with substantive internal conversations relating to the decision making process. Much of the time, these details will be captured in emails, which should be stored in a manner that facilitates their retrieval. However, if any of these exchanges are conducted orally, Te Tāhū must ensure an adequate record exists.

Earlier in this chapter I stated that it was my opinion that Te Tāhū appears to have acted contrary to law in relation to sections 17(1) and 17(2) of the Public Records Act 2005, so I will not repeat my opinion here. However, the issues I identified earlier in relation to keeping records of emails extends to the Communications Services team’s practices.

In the context of responding to media information requests, it is important that I emphasise that I do not expect the Communication Services team to keep records of every single interaction between staff members. I also do not expect that such records should be so detailed that they are onerous to create. I do, however, expect sufficient records of substantive matters to be kept, and for those records to be accessible so that they can be used for subsequent reference by the agency when required, or during a review by me (or, where necessary, by a court[[48]](#footnote-49)). This includes substantive emails in relation to media information requests, which should be maintained in an accessible form to enable use for subsequent reference.

Te Tāhū’s email to the requester confirming ‘*closure*’ of their request, did not contain any of the details required under section 19 of the OIA to be provided when information is refused. As I stated earlier, Te Tāhū did not keep sufficient information to determine whether the request was refused or withdrawn, so it is not clear whether section 19 of the OIA applied. I take this opportunity to remind Te Tāhū that, where a request by media for held information is refused, section 19 of the OIA must be complied with all respects, including advising requesters of their right to complain to me.[[49]](#footnote-50)

The requirement to inform media requesters of their right to complain to me could be fulfilled simply through the use of template responses with this information pre-populated. The Ministerial Relations and Services team (and teams in many other agencies) already use these types of letters or email templates to streamline the process of responding to requesters.

I saw several files containing exchanges between Te Tāhū’s media advisors and journalists which caused me to hold concerns about the media advisors’ understanding of the OIA, and what they communicate to journalists about the OIA. In one example, a journalist asked if they should submit their request ‘*as an OIA’* and the media advisor responded that they should. In another, Te Tāhū’s media advisor told a journalist that their request would ‘*have to be done via the OIA’*.

Exchanges like these may create or foster a misapprehension among some journalists that information requests handled by Te Tāhū’s Communications Services team are not requests to which the OIA applies. It also creates or helps foster the impression that requesters must cite the legislation in their request in order for it to be considered an OIA request, which explicitly is not the case.[[50]](#footnote-51) Te Tāhū’s messaging to journalists in these sample files leads me to consider that Communications Services staff themselves are not aware that all requests for information held by Te Tāhū are OIA requests and that all obligations under that Act apply to them, regardless of which team ultimately processes or responds to it.

As I discussed earlier under [*OIA training*](#_OIA_training_1), Te Tāhū should ensure that its Communications Services team receives targeted training on the OIA to ensure staff understand all their obligations under the OIA.

I understand that my suggestions may require a cultural shift in the Communication Services team. This should be supported by strong messaging from senior leaders to reinforce that requests for information handled by the media team must adhere to the OIA, and there is no reason that OIA- and PRA-compliant practices should undermine the effective relationships which appear to exist between Te Tāhū’s media team and members of the media. Nor should OIA compliance inhibit the swift handling of requests. These requirements are not onerous. They are either to provide the information requested, or if not to provide the reason for refusal and to reference the right to complain to me.

Indeed, amendments to the OIA in 2015 made it clear Parliament intends that agencies can and should actively engage with requesters to assist them to make effective requests at the front end of the OIA process.[[51]](#footnote-52) It is entirely consistent with the scheme of the OIA for agencies to enable officials to make quick, effective and accurate decisions, providing they meet the statutory requirements.

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| **Action points** |
| Review and update media policy incorporating my suggestions. |
| Amend the Communications Services team’s practices to ensure that full and accurate records are created, maintained, and stored accessibly. |
| Ensure all responses to information requests are dealt with in accordance with the provisions of the OIA, including citing the reasons for refusal and the requester’s right to complain to me where requests are fully or partially refused. |
| Ensure messaging from senior leaders reinforces that requests for information handled by the Communications Services team must adhere to the OIA. |

Accessibility and usability of official information releases

All public service and non-public service agencies are required to meet the NZ Government Web Accessibility Standard.[[52]](#footnote-53) The standard is intended to make web content more accessible for users with a range of disabilities, including visual, auditory, physical, speech, cognitive, language, learning and neurological disabilities. Although the accessibility standards apply to website content, it is also best practice to apply these standards to information released in response to OIA requests.

Agencies should publish information in a format that accommodates the use of assistive technology, such as screen readers. For example, publishing or providing information in an ‘image only’ format could preclude the use of screen readers. It may also make the information less easy to use generally, by limiting the ability to search documents by keyword. Where PDF documents are provided in response to an OIA request, they should be searchable.

My investigators have reviewed a range of documents released on Te Tāhū’s website, and responses to OIA requests submitted to Te Tāhū via the ‘FYI’ website. Although some of the documents reviewed were in searchable formats, the practice appears inconsistent. One initial staff survey respondent said:

*There is currently one important gap, which can be solved with either better technology or better direction. OIA guidance says information should be accessible. While clear from reviews of other agencies that this means 'searchable’ …*

It appears that Te Tāhū’s reliance on paper and signed documents means that signed versions are scanned as ‘image only’ and not searchable. The initial staff survey respondent said that clear direction about which version should be provided to the requester would be a solution. They also considered new technology would be useful, such as scanners that create searchable PDF documents, to align with the OIA.

I have produced a guide[[53]](#footnote-54) which includes a section on New Zealand’s international and domestic obligations to ensure disabled people have equal access to information. The guide also provides advice on making information accessible. It should be noted that not all members of the public have access to internet, and some may require information in other formats (including, but not limited to, audio, braille, printed materials, New Zealand Sign Language, and Easy Read) to cater for different access needs. The public should be advised that they can ask for accessible formats if required.

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| **Action points** |
| Ensure all documents proactively released, are searchable and not ‘image only’, and all visual elements are tagged with alternative text. |
| Ensure all documents provided to OIA requesters are searchable and not ‘image only’. |

# Performance monitoring and learning

The OIA does not impose specific requirements on agencies in relation to record keeping and management of requests they receive for access to information. However, Ombudsmen have consistently supported maintaining a full audit trail for any decision made by an agency. Formulating a decision on a request for access to official information is no different. Once this information is recorded, agencies have a wealth of information that can be used to inform business planning and future decisions concerning access to information—but only if it is captured in a way that is meaningful, facilitates subsequent analysis, and regular monitoring and reporting occurs.

To assess agencies’ performance monitoring and learning in relation to requests for official information, I considered whether:

* the agency has an established system for capturing meaningful information about its official information activities and established appropriate and relevant performance measures;
* there is regular reporting and monitoring about the agency’s management performance in respect of official information requests; and
* the agency learns from data analysis and practice.
  + 1. Collection, analysis and reporting of OIA data

Te Tāhū collects a variety of information on the OIA requests it receives. Recorded information largely focuses on request progress and compliance with the maximum statutory timeframe. Te Tāhū records transfers made to and received from other agencies, noting the other agency involved. Requests are also recorded in Te Tāhū’s workflow tool, JAX, to monitor their progress.

It is encouraging that Te Tāhū is collecting some information beyond request progress and compliance with the maximum statutory timeframe, and that it is actively monitoring requests through its workflow tool. Active monitoring of OIA requests, coupled with weekly reports to business units and managers, ensures Te Tāhū is kept aware of request progress. This assists the agency in complying with the maximum statutory timeframe. However, I consider Te Tāhū would benefit from expanding the range of data it collects to include:

* the type of request (Part 2, 3 or 4 of the OIA);
* the reason for transfers;
* reason for extensions;
* the number of charges made and collected;
* whether referrals to the Minister’s Office are for consultation or notification; and
* the time from receipt of the request to communication of the decision.

Expanding the range of data it collects will assist Te Tāhū to further lift the quality of its OIA responses and the efficiency of its processes. For example, although Te Tāhū records whether or not an extension has been granted, it does not keep a discrete record of the reasons for extensions in any particular case. Section 15A of the OIA states that a request may only be extended for certain permissible reasons: where the request is for, or requires a search through, a large quantity of information; or consultations necessary to make a decision on the request cannot be completed within the original time limit. If one or both of these reasons is present, extending the maximum statutory timeframe for responding to OIA requests may be entirely justified. However, because Te Tāhū does not record the reasons for the extension, Te Tāhū is unable to demonstrate generally that its approach to extending the maximum response timeframes are justified. It also precludes Te Tāhū identifying any common causes or themes which prompted the use of extensions, which otherwise might reveal a need for systemic improvement within Te Tāhū. Collecting and analysing a greater range of qualitative data may help Te Tāhū to detect potential systemic issues, such as:

* whether extensions are used appropriately;
* workload issues;
* areas of the business which require training; and
* whether there may be issues with information storage or retrieval (for example, where extensions are made on the basis that substantial collation is required; or where information is refused because it cannot be found).

A wide range of data should be regularly reported to senior leadership to inform decisions regarding OIA practices and to improve performance. Te Tāhū has advised that the Ministerial Relations and Services team creates a variety of reports using data collected in JAX. These reports include:

* A weekly ‘Due and Overdue Report’ to business units, highlighting requests that are nearing or have exceeded the maximum statutory timeframe.
* A fortnightly report to Ministers’ offices including request volumes, summaries and details.
* Several monthly reports to specific business units including request statistics. These reports highlight requests relevant to that business unit’s work and include commentary from the Ministerial Relations and Services team.
* A quarterly ‘Legislative Compliance Report’ showing OIA and Privacy Act requests, including compliance with the maximum statutory timeframe. These are broken down by business unit.

Te Tāhū also includes request volumes and compliance statistics in its annual report. I note that some of the monthly reports include additional commentary to better characterise request volumes and compliance with the maximum statutory timeframe. For example, one report Te Tāhū provided to my investigators identified the root cause for reduced timeliness in that month and noted that process improvements had been implemented to prevent similar issues in the future. I encourage Te Tāhū to continue this practice of characterising and contextualising reported statistics and using these to identify and support process improvements.

In addition to expanding the range of data collected, I encourage Te Tāhū to expand the range of data it reports to senior leadership to include indicators that would help improve Te Tāhū’s performance in a variety of ways. For instance, collecting data on the reasons for refusing requests or withholding information would enhance the existing monitoring of request trends. It would also promote compliance with the Act, and average response time, which can help quantify workload and inform resourcing decisions.

| **Action points** |
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| Collect and analyse further qualitative data on the handling of OIA requests. |
| Improve details in regular reporting of statistics to senior leadership. |

* + 1. Quality measures

Te Tāhū has a robust peer review process for OIA responses but does not have a formalised post-closure quality assurance process. Te Tāhū’s process guide for drafting OIA requests includes a peer review step after a response has been drafted, followed by managerial sign-out of the finalised response.

Te Tāhū also provides specific guidance for peer reviewers in its OIA drafting guide. Te Tāhū’s guidance includes general advice on providing peer review, and a list of prompts to guide their review. It is encouraging that Te Tāhū provides guidance to staff on conducting peer review. Such guidance supports the function of peer review by contributing to a consistent quality of response.

While I commend Te Tāhū’s peer review process and guidance, I consider its performance could be improved by implementing a post-closure quality assurance process. Quality assurance is conducted once the process of responding to the request is complete, and has a broader focus on the effectiveness of the process as a whole. I encourage Te Tāhū to develop a quality assurance process for completed requests, given the valuable qualitative data that can be gained. When analysed effectively, information from a quality assurance process can be used to inform improvements in the OIA process, including:

* ensuring consistency in the agency’s approach across similar requests;
* determining the reason for any delays; and
* identifying areas for training.

The quality of OIA responses may encompass factors such as a robust and adequately documented decision making process, the inclusion of contextual information to assist requesters, and the quality of response letters. Establishing a system of quality assurance could help Te Tāhū identify where additional training needs or support may be needed in a particular business unit, and to recognise excellent performance.

| **Action point** |
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| Develop a formal quality assurance process for completed OIA requests. |

* + 1. Learning from investigations and guidance

Te Tāhū has advised that its Legal team has shared information about recent Ombudsman investigations, including guidance issued by my Office, at Ministry-wide Official Correspondence meetings. Te Tāhū cited my advice on how to deal with OIA and LGOIMA requests for the names and contact details of public sector employees as an example of guidance their Legal team had circulated.[[54]](#footnote-55) As noted in [*OIA guidance material*](#_OIA_guidance_), Te Tāhū also includes Ombudsman guides in the OIA guidance documents available in Te Tāhū’s intranet.

It is encouraging that Te Tāhū has taken steps to circulate my guidance and information from investigations at regular intervals through its Official Correspondence meetings. Further, I commend Te Tāhū’s decision to incorporate several of my guides into the collection of OIA guidance documents available in Te Tāhū’s intranet.

Incorporating my guidance into Te Tāhū’s process guide documents or storing my guidance in Te Tāhū’s intranet documents ensures that information is retained beyond the institutional knowledge of staff the information is initially circulated to. Doing so may also enhance training and development resources available to staff. Te Tāhū would benefit from expanding this practice to also incorporate process improvements derived from Ombudsman investigations into its policies and guidance.

I consider that Te Tāhū would benefit from a formalised process to ensure case notes, lessons from investigation outcomes, and guidance published by my Office are incorporated into Te Tāhū’s practices and guidance where relevant. There would be merit in updating guidance regarding Ombudsman investigations to ensure that potential lessons or process improvements are considered at the conclusion of investigations.

| **Action point** |
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| Formalise the process for learning from Ombudsman investigations and guidance, and reflect this in OIA policy and procedures. |

# Appendix 1. Official information practice investigation — terms of reference

Ministry of Justice - Te Tāhū o te Ture

19 November 2019

This document sets out the terms of reference for a self-initiated investigation by the Chief Ombudsman into the practices of the Ministry of Justice Te Tāhū o te Ture (Te Tāhū) relating to the Official Information Act 1982 (OIA).[[55]](#footnote-56)

## Purpose of the investigation

The investigation will cover how Te Tāhū works to achieve the purposes of the Official Information Act through its processing and decision-making on requests for information. It is essentially a follow-up to the 2015 investigation.

The investigation will assess how well the agency has implemented the action points raised in the 2015 investigation of its OIA practices, and will also consider its current official information practices, policies and culture. This will include consideration of the *Departments’/Ministries’* supporting administrative structures, leadership and culture, processes and practices, including information management, public participation and proactive release of information, to the extent that these relate to achieving the purposes of the OIA.

The investigation will identify areas of good practice, and make suggestions for improvement opportunities where areas of vulnerability are identified.[[56]](#footnote-57)

## Scope of the investigation

The investigation will evaluate each agency’s leadership and culture, organisational systems, policies, practices and procedures needed to achieve the purposes of the OIA, with the primary focus being how each agency has progressed with its implementation of action points from the 2015 *Not a Game of Hide and Seek* investigation. We may also investigate any new issues relating to the agency’s official information culture, policy and practice that arise through the surveys or review of policies and guidance documents about Official Information processing, records management and information management.

The investigation will be underpinned by a set of indicators, grouped around the following dimensions:

* Leadership and culture
* Organisation structure, staffing and capability
* Internal policies, procedures, resources and systems
* Current practices
* Performance monitoring and learning

It will also compare data collected in, or relating to, the period of the 2015 investigation with current data to assess whether the agency has made improvements in any area(s). This data may include:

* OIA statistics
* Complaints received by the Office of the Ombudsman
* Results from agency, staff, and public surveys
* Content on an agency’s website.

A sample of decisions reached by the agency on individual OIA requests may be considered as part of this investigation, to assist the Chief Ombudsman’s understanding of the agency’s official information practices.

If evidence emerges concerning specific examples of OIA breach, then a determination will be made in each case as to whether it can be addressed adequately within this investigation, or whether a separate stand-alone intervention is warranted. Any process issues which can be resolved during the course of the investigation will be addressed immediately.

## Investigation process

The Manager Official Information Practice Investigations will work with a team of Senior Investigators and Investigators to assist the Chief Ombudsman in conducting the investigation. The investigation team will liaise with your nominated contact official during the investigation. Information may be gathered through the processes set out below.

## Information gathering

Information will be gathered through desk research, a survey of each agency’s official information practices, a staff survey, meetings with key staff, and a survey of the public. A sample of decisions reached by the agency on individual OIA requests may also be requested and considered as part of this investigation. As would be the case with any investigation conducted by the Ombudsman, any information requested of an agency by this Office during this investigation will be subject to the secrecy provisions in section 21 of the Ombudsmen Act 1975 (OA). Requests for information will be made pursuant to section 19 of the OA.

## Desk research

A review of publicly available information including the agency’s annual reports, strategic intentions documents, and any other material made available on its website. Desk research will also review data and information held by the Office of the Ombudsman (for example, statistical data), and statistics published by the agency regarding reported OIA timeliness.

## Surveys

A survey of the agency, including requests for the supply of internal documents about:

* The steps taken to implement action points suggested by the Chief Ombudsman in the 2015 investigation
* Policies and guidance documents related to official information processing, record-keeping and information management

A survey of agency staff, canvassing:

* Views of the agency’s leadership and culture in relation to official information and transparency more generally
* Views of the agency’s policies, processes, training and resources relating to official information
* Views of the agency’s record-keeping and Information Management systems, policies, training and resources, inasmuch as these impact the agency’s ability to discharge its official information obligations

A survey of members of the public (including journalists/other media) that have sought information from the agency. The Chief Ombudsman may issue a media release that includes a link to the public survey, and will ask each agency to include a link to the survey on its public website.

Note that we may also request any other documents or information required to investigate issues that arise as a result of meetings with staff; and agency, staff and public surveys.

## Meetings

The investigation team will meet with:

* the tier-two manager responsible for the agency’s official information processing function; and
* the manager of the team that processes official information requests.

In addition, further meetings may be scheduled with other staff members after information collected from the agency and through staff and stakeholder surveys has been analysed by the investigation team.

My staff will also meet with staff of the Minister’s office who liaise with the agency on responses to OIA requests.

Staff members selected to meet with the investigation team will be provided with information about the meetings process and the purpose of the meeting. The meetings will be digitally (audio) recorded. Meetings are likely to take approximately one hour.

## Other

A review of the agency’s intranet.

## Follow up period

After information has been gathered through the methods outlined above, the investigation team may request additional information or clarification from the agency on points that may have arisen throughout the course of the investigation, to assist our understanding of matters of fact and to provide the opportunity for further relevant information to be supplied.

## Reporting

### Draft report

The draft report of the Chief Ombudsman’s investigation will incorporate good practices as well as any issues that may have been identified during the investigation. The draft report will outline the Chief Ombudsman’s provisional findings and, when relevant, identify the suggestions and/or recommendations that may be made to improve the agency’s official information practices. The draft will be provided to the Chief Executive for comment.

### Final reports

Comments received on the draft report will be considered for amendment of, or incorporation into, the final report.

The final report will be sent to the agency’s Chief Executive, relevant Ministers, published on the Ombudsman’s website, and tabled in Parliament. Note that the published version of the report will not include detail of our assessment of the agency’s progress toward implementing action points from the 2015 *Not a Game of Hide and Seek* investigation. We committed to each agency at the time that the details of the 2015 investigation for each agency would not be made public.

In addition to individual reports, we will produce an ‘omnibus’ report which will outline general trends across all agencies. Because this will be a summary of the final opinions for each agency, a draft of this report will not be provided to the agencies as they will have already had chance to comment on our findings.

## Evaluation

Following completion of his investigation, the Chief Ombudsman will conduct a review exercise as part of his Continuous Improvement programme. This will involve seeking the views of the agency’s senior managers on their experience of this practice investigation, its value and relevance to their improving their work practices, and how future investigations may be improved when applied to other agencies.

# Appendix 2. Key dimensions and indicators

## Introduction

There are five key dimensions that have an impact on official information good practice in government agencies:

1. [Leadership and culture](#_Leadership_and_culture)
2. [Organisation structure, staffing and capability](#_Organisation_structure,_staffing)
3. [Internal policies, procedures and resources](#_Internal_policies,_procedures)
4. [Current practices](#_Current_practices)
5. [Performance monitoring and learning](#_Performance_monitoring_and)

These dimensions are underpinned by a series of indicators, which describe the elements of good practice we would expect to see in order to evaluate whether each of the dimensions is being met.

These indicators are not exhaustive and do not preclude an agency demonstrating that good practice in a particular area is being met in other ways.

## Leadership and culture

Achieving the purposes of the Act[[57]](#footnote-58) largely depends on the attitudes and actions of leaders, including Ministers, chief executives, senior leaders and managers within the agency. Ministers, chief executives and senior managers should take the lead in promoting openness and transparency, and championing positive engagement with official information legislation.

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| **Elements** | **Things to look for (indicators)** |
| Ministers, chief executives, senior leaders and managers demonstrate a commitment to the agency meeting its obligations under the Act and actively foster a culture of openness within the agency | * Chief executives, leaders and the relevant Minister(s) actively and visibly work together to promote a culture of positive OIA compliance and good administrative practice * Leaders make clear regular statements to staff and stakeholders in support of the principle and purposes of official information legislation, reminding staff of their obligations * Leaders demonstrate clear knowledge and support of the Act’s requirements * Leaders encourage staff to identify areas for improvement and provide the means for suggesting and implementing them when appropriate * Leaders make examples of good practice visible * A visible and explicit statement exists about the agency’s commitment to openness and transparency about its work |
| Senior leadership have established an effective official information strategic framework which promotes an official information culture open to the release of information | * The agency has a strategic framework describing how it intends to achieve:   + Compliance with the Act   + Good practice   + A culture of openness and continuous improvement   + Participation and access to information by the public and stakeholder groups * Senior leadership takes an active role in the management of information * A senior manager has been assigned specific strategic responsibility and executive accountability for official information practices including proactive disclosure * Senior managers have accountabilities for compliance with the Act * Appropriate delegations exist for decision makers and they are trained on agency policies and procedures and the requirements of the Act * Senior leaders model an internal culture whereby all staff:   + Are encouraged to identify opportunities for improvement in official information practice (including increasing proactive disclosure) and these are endorsed and implemented   + Are trained to the appropriate level for their job on official information policies and procedures and understand the legal requirements   + Have compliance with the Act in their job descriptions, key performance indicators, and professional development plans * Senior leaders oversee the agency’s practice and compliance with the Act, the effectiveness of is structures, resources, capacity and capability through regular reporting. Any issues identified that risk the agency’s ability to comply with the Act are actively considered and addressed |
| Senior leadership demonstrate a commitment to proactive disclosure, and public participation with clear links to the agency’s strategic plans, thereby creating a public perception, and a genuine culture of openness | * Senior leaders are committed to an active programme of proactive disclosure and stakeholder engagement where the agency seeks and listens to the public’s information needs through:   + Regular stakeholder meetings and surveys   + Reviewing and analysing requests and media logs   + Reviewing and analysing website searches * There is clear senior leadership commitment to the proactive release of information resulting in the agency publishing information about:   + The role and structure of the agency and the information it holds   + Strategy, planning and performance information   + Details of current or planned work programmes, including background papers, options, cabinet papers and consultation documents   + Internal rules and policies, including rules on decision-making   + Corporate information about expenditure, procurement activities, audit reports and performance   + Monitoring data and information on matters the agency is responsible for   + Information provided in response to official information requests   + Other information held by the agency in the public interest * The agency holds up to date information that is easily accessible (easy to find, caters for people requiring language assistance or who have hearing or speech or sight impairments) about:   + What official information it holds   + How it can be accessed or requested by the public and its stakeholders   + How to seek assistance   + What the agency’s official information policies and procedures are (including charging)   + How to complain about a decision * The agency makes information available in different formats, including open file formats * The agency’s position on copyright and re-use is clear * The public and stakeholders perceive the agency to be open and transparent |

## Organisation structure, staffing and capability

Responding to official information requests is a core function of the public sector. Therefore, it is expected agencies will organise their structure and resources to ensure they are able to meet their legal obligations under the Act considering each agency’s size, responsibilities and the amount of information held.

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| **Elements** | **Things to look for (indicators)** |
| Agency has the capacity to discharge its official information obligations, with clear and fully functioning:   * roles; * accountabilities; * reporting lines; * delegations; and * resilience arrangements. | * An appropriate, flexible structure exists to manage official information requests which is well resourced reflecting the:   + Size of the agency   + Number of requests received (and from whom, public, media, other)   + Number or percentage of staff performing official information functions in the agency   + Percentage of time these staff are also required to undertake other functions   + Need to respond within statutory time limits   + Use of staff time, specialisations, structural resilience * Roles and responsibilities are clearly defined:   + Specific responsibility exists for coordinating, tracking and monitoring official information requests and agency decisions (and ombudsman decisions) and there is the authority and support to ensure compliance[[58]](#footnote-59)   + Decision makers are sufficiently senior to take responsibility for the decisions made and are available when required, and if not, resilience arrangements exist.   + The official information function is located in an appropriate unit or area within the agency that facilitates effective working relationships with relevant business units (for example; media and legal teams) |
| Agency has the capability to discharge its official information obligations | * Training at all levels on the requirements of the Act is provided regularly and staff are expected to attend, and to apply the knowledge acquired * Training is role specific with additional training for senior managers, decision makers and staff with official information responsibilities to support their work * Expectations are set by senior leaders that regular refreshers are provided to all staff * Training is provided on information management and record keeping that is role-specific and includes guidance on information retrieval as well as information storage * The process for staff to assess and make decisions on official information requests is clear, understood, up to date and staff apply and document the process * Agency staff, including front line staff and contractors, know what an official information request is and what to do with it * User-friendly, accessible resources, guidance and ’go to’ people are available * Staff official information capability is regularly assessed and monitored through, for example, performance reviews and regular training needs analyses * Official information obligations are included in induction material for all staff * The agency’s internal guidance resources are accessible to all staff |

## Internal policies, procedures and resources

Agencies should develop or adopt policies and procedures that will assist staff to consistently apply the requirements of the Act supported by good systems, tools and resources ensuring effective processing of requests consistent with the requirements of the Act.

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| **Elements** | **Things to look for (indicators)** |
| The agency has good official information policies, procedures and resources that are accurate and fit for purpose | * Good policies, procedures and resources exist for receipt and assessment of requests, which cover:   + What is official information   + Identifying the type of official information request received (Part 2, 3 or 4 of OIA) and distinguishing from Privacy Act requests   + Identifying the scope of the request   + Consulting with and assisting the requester   + Establishing the eligibility of a requester when necessary   + Logging requests for official information   + Acknowledging receipt of the request   + Correctly determining statutory time limits and tracking the handling of the requests   + Identifying who in the agency should respond to the request   + Establishing criteria for deciding whether, and if so, how a response to a request should be provided urgently   + Managing potential delays (including the reasons for them, the escalation process and invoking the extension provision) * Good policies, procedures and resources exist for information gathering on requests, which cover:   + Identifying the information within the scope of the request   + Searching, finding and collating the information at issue   + Documenting the search undertaken for the information within the scope of the request (including time taken if charging is likely)   + Transferring requests to other agencies or Minister(s) and advising the requester   + Consulting officials within the agency and third parties   + What to do if the information is held by a contractor covered by the Act by virtue of section 2(5) of the OIA   + Engaging with Ministers on official information requests * Good policies, procedures and resources exist for decision making on requests, which cover:   + Making a decision whether to release the information   + Making a decision on the format in which information is released   + Making a decision whether to charge for the release of information   + Guidance on application of withholding or refusal grounds relevant to requests made under Parts 2, 3 and 4   + Guidance on any statutory bars on disclosure relevant to the legislation the agency administers   + Imposing conditions on release where appropriate   + Advising the requester of the decision   + Recording reasons for each item of information withheld, and the agency’s consideration of the public interest in release where required * Good policies, procedures and resources exist for releasing requests, which cover:   + Providing the information in the form requested   + Preparing information for release (including redactions) * The agency has tools and resources for processing official information requests, such as templates, checklists, *‘go-to’* people, effective tracking and monitoring systems, and redaction software and staff are trained on how to use them. * The agency’s official information policies, procedures and resources are regularly reviewed and up-to-date * Staff find them useful and easy to access |
| The agency has appropriate record keeping and information management policies, procedures and resources | * Staff are able to identify, access and collate information that has been requested under the Act * The agency has accurate and comprehensive records and information management policies, procedures and resources which enable information relevant to a request to be identified and collated * The policies and procedures cover aspects such as:   + Creating, organising, maintaining and storing records   + Managing and modifying records   + The security of information   + A guide to determining which records systems exist and what information each holds   + Retaining, retrieving and disposing of records   + Both manual and electronic records, including personal e mail accounts, instant messaging and text messages   + Assigned responsibilities and performance criteria for records and information management by staff   + The provision of secure audit trails   + Annual/periodic audits of records * These policies and procedures are regularly reviewed and up-to-date * Staff find the policies and procedures useful and easy to access |
| The agency has accurate and comprehensive proactive release policies, procedures and resources | * The policies and procedures cover the release of such things as:   + Information that has been released in response to official information requests   + Information described in section 20 of the OIA about the agency and the information it holds   + Information described in section 22 of the OIA about the agency’s internal decision making rules, including its official information policies and procedures   + Strategy, planning and performance information   + Financial information relating to income and expenses, tendering, procurement and contracts   + Information about work programmes and policy proposals   + Information about public engagement processes, including public submissions   + Minutes, agendas, and papers of advisory boards or committees   + Information about regulatory or review activities carried out by agencies * The policies and procedures include a process for identifying opportunities for proactive release, for example, where a high number of official information requests are received about a subject * The policies and procedures include a process for preparing for proactive release, including managing risks around private or confidential information, commercially sensitive information and information subject to third party copyright * The policies outline how and where the information should be made available for access, and if any charge should be fixed * They are regularly reviewed and up-to-date * Staff know about the agency’s proactive release policies and procedures * Staff find the policies useful and easy to access |

## Current practices

The effectiveness of the Act is largely dependent on those who implement it on a day to day basis and how they apply the resources available to them to manage the realities of giving effect to the Act.

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| **Elements** | **Things to look for (indicators)** |
| Official information practices demonstrate understanding, compliance, and commitment to the principle and requirements of the Act | * The agency complies with maximum statutory timeframes to transfer, extend, decide on requests, and release official information * Requests are handled in accordance with the applicable law (Privacy Act, Part 2 OIA, section 22 OIA, section 23 OIA, Part 4 OIA) * The agency makes appropriate use of the withholding grounds and administrative reasons for refusal * The agency makes appropriate use of the mechanisms for dealing with large and complex official information requests * The agency gives proper consideration to the public interest in release of official information, and explains this to requesters * The agency interprets the scope of official information requests reasonably * The agency consults with, and provides reasonable assistance to requesters * The agency consults appropriately with third parties * Ministerial involvement in agency official information decision making is appropriate * The process for escalation of issues is used where necessary and is effective * Official information is released in the form requested unless there is a good reason not to * Consideration is given to releasing information in accessible formats * There is evidence that agency practice aligns with its policies and procedures * Staff regularly use the agency’s policies and procedures |
| The agency has good record keeping and information management practices | * The agency documents its handling of official information requests, including the steps taken to search for the requested information, the information identified as relevant to the request, and the reasons for its decisions * The agency’s records and information management practices facilitate official information compliance (it is generally easy to find information that has been requested under the Act) * Staff regularly use the Agency’s records and information management policies and procedures as described in ‘The agency has appropriate record keeping and information management policies, procedures and resources’ indicator under [*Internal policies, procedures, and resources*](#_Internal_policies,_procedures) |
| The agency has good proactive release practices | * The agency’s entry in the *Directory of Official Information* is full, accurate and likely to assist requesters, and is linked from, or reproduced on, the agency’s own website * The agency publishes useful information online including the types of information described in the ‘The agency has accurate and comprehensive proactive release policies, procedures and resources’ indicator under [*Internal policies, procedures, and resources*](#_Internal_policies,_procedures) * The agency publishes information in multiple formats, and applies open use standards * The agency’s position on copyright and re-use is clear * Staff use the agency’s proactive release policies and procedures where applicable |

## Performance monitoring and learning

Agencies should adopt performance monitoring and learning frameworks that enable them to learn and drive performance improvement and innovation.

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| **Elements** | **Things to look for (indicators)** |
| The agency has an established system for capturing and analysing data to inform meaningful and appropriate performance measures | * Performance measures include:   + Quantity – for example the number of requests, from where and the number processed   + Efficiency – for example duration of request handling, number of responses that exceed legislative maximum time limits, the reasons for any delays   + Quality – for example outcome of any internal quality assurance reviews and/or external reviews of official information decisions and processes and whether or not the results of those reviews provide evidence of system wide issues   + Monitoring of opportunities for proactive release – for example identifying common types of requests or a high number that indicates information that could be made available * The agency collects data about its performance under the Act including such things as:   + The number of requests   + The type of request (Part 2, 3 or 4 of the Act)   + The type of requester (for example; media, political researcher, corporation, individual citizen, Member of Parliament, interest group, etc.)   + The information sought   + The number and reason for transfers, and whether the transfer was made in time   + The number, length and reason for extensions   + The outcome of the request (granted in full, granted in part, refused in full, withdrawn or abandoned)   + The number and amount of charges made and collected   + The grounds on which information was withheld or the request refused   + Whether the requester was consulted prior to any refusal under section 18(f)   + Whether the Minister was consulted on the decision   + Whether the decision was notified to the Minister   + Whether, and which, third parties were consulted   + The time from receipt of the request to communication of the decision   + The time from receipt of the request to release of the information   + If the time limit (extended or not) was breached, the reasons for the delay   + Whether the response was proactively published and if not, why   + Whether the Ombudsman investigated or resolved a complaint about the request   + The outcome of the Ombudsman’s investigation or involvement   + The outcome of any internal quality assurance reviews of processes or decisions   + Staff time spent and costs incurred in processing official information requests, including the time spent assisting in processing requests by staff who are not in core OIA roles * The agency analyses this data to determine whether it is complying with its relevant performance measures * The agency monitors information demand (for example, through official information requests, website use, and other enquiries) to identify opportunities for proactive release * The agency monitors any difficulties in identifying and collating information that has been requested |
| There is regular reporting about the agency’s management and performance in respect of official information requests | * Data about the agency’s official information performance, and information demand is regularly reported to senior leaders, and at least quarterly to the Chief Executive * Reports include emerging themes or trends, opportunities for improvement and proactive release, resourcing, capacity or capability (training) issues * Reporting informs planning, resourcing and capability building decisions |
| The agency learns from data analysis and practice | * The agency has a system for sharing official information learning and experience, such as meetings, newsletters, email or intranet updates, or official information *‘champions’* * The agency monitors relevant data, guidance and publications, including those produced by the Ombudsman and Public Service Commission * The agency monitors the outcome of Ombudsman investigations and reports these to relevant staff, including official information decision makers * The agency analyses this information to determine where it has the potential to improve official information practice, stakeholder relations, or increase opportunities for public participation * The agency periodically reviews its relevant systems, structures, and compliance with policies and procedures * The agency actively participates in initiatives to share and discuss best practice externally, for example through forums, interest groups, networks and communities of practice |

Document ends

1. Accident Compensation Corporation, Department of Corrections, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Justice, New Zealand Customs Service, New Zealand Defence Force, Waka Kotahi NZ Transport Agency, Ministry of Social Development, Ministry of Transport, Public Service Commission. [↑](#footnote-ref-2)
2. See ss 13(1) and 13(3) OA 1975 [↑](#footnote-ref-3)
3. Link to the Unite against COVID-19 [History of the COVID-19 Alert System webpage](https://covid19.govt.nz/alert-system/history-of-the-covid-19-alert-system/).

   Note that a second nationwide lockdown was initiated in August 2021. My post-lockdown staff survey and agency questionnaire only relate to the agency’s practices during the first lockdown. [↑](#footnote-ref-4)
4. On occasion I may look at material from outside the investigation period where particular issues warrant further investigation. [↑](#footnote-ref-5)
5. See ss 12(1)(e) and 52(1)(d) of the Public Service Act 2020 [↑](#footnote-ref-6)
6. My predecessor recommended this update in her report of 2015: *Not a Game of Hide and Seek* [↑](#footnote-ref-7)
7. Link to [s17 of the Public Records Act 2005](https://www.legislation.govt.nz/act/public/2005/0040/latest/DLM345729.html) [↑](#footnote-ref-8)
8. Link to [Accessibility charter](https://www.odi.govt.nz/guidance-and-resources/the-accessibility-charter/). [↑](#footnote-ref-9)
9. Link to [s 22](https://www.legislation.govt.nz/act/public/1982/0156/latest/DLM65622.html) of the OIA. [↑](#footnote-ref-10)
10. Link to [Open Government Partnership New Zealand website](https://ogp.org.nz/new-zealands-plan/third-national-action-plan-2018-2020/commitment-7-progress-report-31-december-2020/). [↑](#footnote-ref-11)
11. Link to [Ministry of Justice Charging Guidelines](https://www.justice.govt.nz/assets/Documents/Publications/1982-Official-Information-Act-charging-guidelines.pdf). [↑](#footnote-ref-12)
12. 125 Ministry staff responded to my initial survey. [↑](#footnote-ref-13)
13. Link to [Transparency International’s website](https://www.transparency.org/en/cpi). [↑](#footnote-ref-14)
14. A staff survey was also completed after the 2020 lockdown and the results were similar to the initial staff survey results. [↑](#footnote-ref-15)
15. Link to [Te Tāhū of Justice website](https://www.justice.govt.nz/). [↑](#footnote-ref-16)
16. See the section titled [*Directory of official information*](#_Directory_of_official) for details. [↑](#footnote-ref-17)
17. Link to [Terms and Conditions](https://consultations.justice.govt.nz/terms_and_conditions/). [↑](#footnote-ref-18)
18. Link to [Te Tāhū’s consultation page](https://consultations.justice.govt.nz/privacy_policy/). [↑](#footnote-ref-19)
19. See the published opinion on the PHARMAC case by Ombudsman David McGee, [*Identities of members of the public making submissions and PHARMAC staff involved in decision making on funding of drug*](http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/532/original/identities_of_submitters_and_staff_involved_in_decision.pdf?1358974467), 14 December 2012. [↑](#footnote-ref-20)
20. Link to [*A consultation document released by the Independent Panel examining the 2014 family justice reforms*](https://www.justice.govt.nz/assets/Documents/Publications/have-your-say-on-the-family-justice-system-english2.pdf)*,* on Te Tāhū’s website. [↑](#footnote-ref-21)
21. Link to consultation titled [*Incitement of Hatred and Discriminations in Aotearoa New Zealand,*](https://consultations.justice.govt.nz/policy/incitement-of-hatred/)on Te Tāhū’s website. [↑](#footnote-ref-22)
22. The Senior Courts Act 2016 and District Courts Act 2016, and the corresponding Senior Courts (Access to Court Documents( Rules 2017 and District Court (Access to Court Documents) Rules 2017 [↑](#footnote-ref-23)
23. Link to [*Not a Game of Hide and Seek*](https://www.ombudsman.parliament.nz/resources/oia-report-not-game-hide-and-seek)(December 2015): 65. [↑](#footnote-ref-24)
24. Link to [Public Service Commission website](https://www.publicservice.govt.nz/guidance/official-information/official-information-forum/). [↑](#footnote-ref-25)
25. Section 12(1) and (1AA) of the OIA refers. [↑](#footnote-ref-26)
26. Link to Ministry’s website [Court information vs Ministry information](https://www.justice.govt.nz/about/news-and-media/media-centre/media-information/media-guide-for-reporting-the-courts-and-tribunals-edition-4-1/access-to-court-information/court-v-moj-information/). [↑](#footnote-ref-27)
27. Eleven percent of respondents said it was neither easy nor difficult to find/access OIA policy and guidance materials; 10 percent said it was ‘somewhat’ or ‘very difficult’; and two percent said they ‘didn’t know’. [↑](#footnote-ref-28)
28. Consultation with the Minister – where the Minister’s input on an OIA request is required and the agency’s decision on that request might legitimately be delayed until that reasonably be obtained. [↑](#footnote-ref-29)
29. Notification of the agency’s decision on an OIA request to the Minister. This is for the Minister’s information only, at the same time, or shortly before the decision is conveyed to the requester. [↑](#footnote-ref-30)
30. Ombudsman’s [guide to processing OIA requests on the Ombudsman website](https://www.ombudsman.parliament.nz/resources/oia-ministers-and-agencies-guide-processing-official-information-requests). [↑](#footnote-ref-31)
31. These relate to, respectively, requests for internal decision making rules; requests for statements of reasons, and requests for personal information by corporate entities. [↑](#footnote-ref-32)
32. Link to [Open Government Partnership website](https://ogp.org.nz/). [↑](#footnote-ref-33)
33. PSC began reporting on the number of OIA responses proactively published on agencies websites in its results for the 2016/17 reporting year. Link to [PSC’s official information statistics webpage](https://www.publicservice.govt.nz/guidance/official-information/oia-statistics//). [↑](#footnote-ref-34)
34. The data and information impact assessment is a set of questions corresponding with the information management principles that ensure the information principles are considered for each individual project. [↑](#footnote-ref-35)
35. The data and information report presents the findings of the data and information impact assessment as a table based on a risk-management model. The table includes the principle along with the assessed risk (low/medium/high) and a risk description. [↑](#footnote-ref-36)
36. 188 out of out of 1189 current Ministry employees have completed the module. [↑](#footnote-ref-37)
37. Specifically, General Disposal Authority 7, link to [GDA 7](https://assets.ctfassets.net/etfoy87fj9he/2vPIn4vpuDzDatnAKz7Ccx/f7f25abf13d3fa99cfe54f07cf9d39a0/16_GDA7-General-disposal-authority-7.pdf). [↑](#footnote-ref-38)
38. Section 29A of the Official Information Act requires the agency to provide the Ombudsman upon request with any information related to the investigation. [↑](#footnote-ref-39)
39. Link to [s17](https://www.legislation.govt.nz/act/public/2005/0040/latest/DLM345729.html) of the Public Records Act 2005. [↑](#footnote-ref-40)
40. Link to the Public Service Commission’s [OIA statistics webpage](https://www.publicservice.govt.nz/guidance/official-information/oia-statistics/). [↑](#footnote-ref-41)
41. Link to Ministry of Justice [website](https://www.justice.govt.nz/justice-sector-policy/publications/?Filter_Topic=765). [↑](#footnote-ref-42)
42. Link to Ministry’s [COVID information](https://www.justice.govt.nz/covid-19-information/). [↑](#footnote-ref-43)
43. Link to Ministry’s [sector and policy webpage](https://www.justice.govt.nz/justice-sector-policy/). [↑](#footnote-ref-44)
44. Link to Ministry’s [research data](https://www.justice.govt.nz/justice-sector-policy/research-data/). [↑](#footnote-ref-45)
45. Cabinet manual [↑](#footnote-ref-46)
46. For example, while in depth technical knowledge of the withholding grounds in sections 6 and 9 may not be necessary for staff in the media team, they must be aware of timeliness obligations; and of the requirements of section 19 where information is refused. As I discussed earlier, under [*Leadership and culture,*](https://wakacs.ooto.ombudsmen.govt.nz/otcsdav/nodes/1874436/2019-20%20OIA%20compliance%20and%20practice%20PO%20NAGOHAS%20MoJ%20draft.docx#_Leadership_and_culture_1) it is good practice for agencies to publish OIA policy so the process for making decisions on (among other things) requests for urgency is transparent to requesters. [↑](#footnote-ref-47)
47. Link to [s13](https://www.legislation.govt.nz/act/public/1982/0156/latest/DLM65385.html) of the OIA. [↑](#footnote-ref-48)
48. *Williams v New Zealand Police* [2021] NZHC 808, currently under appeal. [↑](#footnote-ref-49)
49. Link to [s19](https://www.legislation.govt.nz/act/public/1982/0156/latest/DLM65608.html) of the OIA. [↑](#footnote-ref-50)
50. Link to [s 12(1AA)(b)](https://www.legislation.govt.nz/act/public/1982/0156/latest/DLM65382.html) of the OIA. [↑](#footnote-ref-51)
51. Link to [s 15(1AA) and (1AB)](https://www.legislation.govt.nz/act/public/1982/0156/latest/DLM65390.html) of the OIA. [↑](#footnote-ref-52)
52. Link to the [Digital Government Web Accessibility Standard 1.1](https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards/web-accessibility-standard-1-1/). [↑](#footnote-ref-53)
53. See section ‘Making sure the information is accessible’ on p 11 of the Office of the Ombudsman’s [Proactive release: Good practices for proactive release of official information guide](https://www.ombudsman.parliament.nz/resources/proactive-release-good-practices-proactive-release-official-information). [↑](#footnote-ref-54)
54. See the Office of the Ombudsman’s [*Names and contact details of public sector employees*](https://www.ombudsman.parliament.nz/resources/names-and-contact-details-public-sector-employees). [↑](#footnote-ref-55)
55. See sections 13(1) and 13(3) of the Ombudsmen Act 1975 (OA). [↑](#footnote-ref-56)
56. Formal recommendations under the OA will only be made if the Chief Ombudsman forms an opinion that a decision, recommendation, act, or omission by the agency was unreasonable or contrary to law under section 22 of the OA. [↑](#footnote-ref-57)
57. ‘The Act’ refers to the Official Information Act 1982 [↑](#footnote-ref-58)
58. This indicator is also relevant to performance monitoring and learning. [↑](#footnote-ref-59)