



GOVERNMENT COMMUNICATIONS SECURITY BUREAU

TE TIRA TIAKI

Policy Procedure: **1007**

Responding to Information Requests

Process Owner:

Compliance and Policy Manager

Activity:

This procedure outlines the process and considerations that must be met in responding to information requests under the provisions of the Official Information Act 1982 and the Privacy Act 1993.

Function:

- To provide individuals with appropriate access to private information held by GCSB relating to that person in accordance with the requirements of the Privacy Act,
 - To provide requesters with appropriate access to official information in accordance with the requirements of the Official Information Act,
 - To appropriately recognise the public interest in transparency and accountability in the public sector, as well as the preservation of personal privacy and the obligations of national security, and
 - To establish procedures to achieve those purposes.
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Purpose and overview

1. This document is intended to set out the GCSB process for replying to requests made under the Official Information Act 1982 (OIA) and the Privacy Act 1993.
2. The GCSB's designated Privacy Officer(s), who reports to the Policy and Compliance team, is responsible for preparing responses to OIA and Privacy Act requests and ensuring the correct consultation and sign-off process is followed.
3. All responses to OIA and Privacy Act requests are signed out by the Director.

Principle of Availability

4. The principle of availability underpins the OIA. It is set out in section 5 of the Act. The principle of availability means that requested information must be made available unless there is a good reason for withholding it. This principle must be kept in mind when considering how best to respond to a request.

Access to personal information

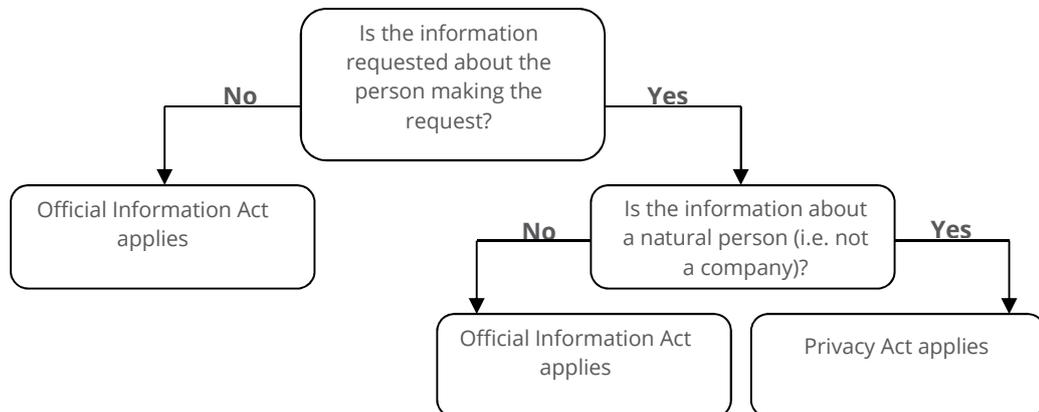
5. Principle 6 of the Privacy Act allows for individuals to request confirmation of the existence of information held on them and access to that information.

Defining official information and personal information

6. For the purposes of the OIA, official information means any information held by a department, Minister of the Crown, or an organisation. It includes all formal and informal documentation including emails, draft documents and oral conversations.
7. For the purposes of the Privacy Act, personal information means information about an identifiable individual and includes information relating to a dead person.

Requests made under the Official Information and Privacy Acts

8. Before any response is prepared, the Privacy Officer must determine whether the OIA or the Privacy Act is to be used. The flowchart below provides an easy means of determining the appropriate governing statute:



9. A request by a company (or other entity that is not a natural person) for information about that company or entity is considered under the Official Information Act, as is any request by a person for information about another person.
10. Any information a natural person requests about themselves is considered under the Privacy Act.
11. A request for information may have parts that must be considered under the OIA and other parts that must be considered under the Privacy Act.

Who can make a request

12. Requests can be made under the OIA by the following:
 - a. a New Zealand citizen; or
 - b. a permanent resident of New Zealand; or
 - c. a person who is in New Zealand; or
 - d. a body corporate which is incorporated in New Zealand; or
 - e. a body corporate which is incorporated outside New Zealand but which has a place of business in New Zealand.
13. In any case where the requester has not provided evidence of meeting the above criteria, the Privacy Officer may decide to email the requester from the GCSB generic "information" email address to request that the requestor provide this information. This email must be signed-off by the Chief of Staff (or a delegate they have named) before being sent out. Sign-off can be done in person or over email and does not require a cover sheet. Information may still be released to those people who do not satisfy the requirements under section 12. This will be at the discretion of the Director.
14. Requests can be made under the Privacy Act 1993 by any person. The Privacy Act does not address requests from companies.

Receiving requests

15. In general, any request for information held by the GCSB is an OIA or Privacy Act request. It is not necessary for a requester to explicitly state that their request is made under either Act, or for the request to be in a particular format.
16. If a requestor wishes to make an oral OIA or Privacy Act request, the contacted staff member should invite them to make the request in writing to ensure accuracy of address, contact names and information requested. If the requester declines to make their request in writing, the contacted staff member must make a written record of the oral request at the time that it is received. That written record must be logged and filed in accordance with the process described below.
17. The OIA requires requesters to specify the information they are requesting "with due particularity". This means that the GCSB must be able to understand what information the requester is seeking.

Duty to assist in making a request

18. Section 13 of the OIA and section 38 of the Privacy Act impose obligations on the GCSB to provide reasonable assistance to a person to make an information request. Specifically, GCSB has a duty to assist a person who:
 - a. wishes to make a request in accordance with either Act; or
 - b. has made an information request that does not meet the requirements of the relevant Act; or
 - c. has not made their request to the appropriate department, agency or organisation.
19. If the scope of the request is not obvious, the Privacy Officer can contact the requester, either through the GCSB "information" email address or through a phone call.

Logging and filing requests

20. Information requests will arrive either in the “information” email inbox, through the post or through contact with a GCSB staff member. Once received, a request must be given to Registry who will log it. A reference to the soft-copy file will then be emailed to the Privacy Officer.
21. All research, correspondence, documents and a summary of any decisions made in relation to the request should be filed to ensure a clear picture of the decision making process can be seen by anyone who should need to understand it. (This may include the Ombudsman or Privacy Commissioner if a complaint is made about any GCSB response.)

Responding to requests

Timing of response

22. GCSB must respond to both Privacy Act and Official Information requests “as soon as reasonably practicable”, in accordance with section 40 of the Privacy Act and section 15 of the OIA.
23. At a maximum, requests must be decided upon and sent or given to the requester within 20 working days, except in cases where this limit is extended (as explained below). “Working day” is defined in the same way in sections 2 of the OIA and the Privacy Act.

Extensions

24. If justified, the GCSB can extend the time for responding to a request, or transferring a request to another entity, beyond the 20 day limit. Extensions are permitted under section 15A of the OIA and section 41 of the Privacy Act.
25. Extensions can be made where either:
 - a. the request is for a large quantity of official information or necessitates a search through a large quantity of information and meeting the original time limit would unreasonably interfere with the operations of the department, or
 - b. consultation necessary to decide how to respond to the request means that a proper response cannot reasonably be made within the original limit.
26. Requests for extensions must be signed off in the same manner as substantive responses.
27. Notification of the extension must be sent to the requester within the original 20 working day limit. This notification must be in writing and :
 - a. specify the period of the extension (such as specifying the date when the response is now due);
 - b. give the reasons for the extension;
 - c. state that the person who made the request for the official information has the right, under section 28(3) of the OIA and section 44 of the Privacy Act, to make a complaint to an Ombudsman or the Privacy Commissioner about the extension; and
 - d. contain such other information as is necessary.

Urgent requests

28. Individuals are able to request an urgent response to their information requests. Requesters must state the reasons why they are seeking their request be treated with urgency. This is provided for by section 12(3) of the OIA and section 37 of the Privacy Act.
29. There are no statutory requirements for urgent requests. When responding to an urgent request, the Ombudsman's guidelines suggest that agencies consider
 - a. the reasons for urgency,
 - b. the volume of information to be considered,
 - c. the nature of the information requested and how it is held,
 - d. whether consultations are needed before a decision can be made, and
 - e. whether according priority to an urgent request would unreasonably interfere with the operations of the agency involved.
30. Upon receipt of an urgent request, the Privacy Officer should consult with the individuals listed for consultation in the sign-off check list. Following consultation and guidance, the request for urgency will either be accepted or declined. The Privacy Officer will advise the requester of the decision in writing.

Transfer of requests

31. Section 39 of the Privacy Act and section 14 of the OIA allow for the transfer of requests to other agencies. Requests must be transferred to another agency where the information requested is either:
 - a. not held by the GCSB but is believed to be held by another department, Minister or local authority, or
 - b. the GCSB believes that the request is more closely connected with the functions of another department, Minister, or local authority.
32. If a transfer needs to be made, the Privacy Officer must draft letters to the agency the request will be transferred to and the original requester. It is good practice to liaise with the agency that a request may be transferred to prior to formally transferring a request.
33. The transfer must take place within 10 working days of receiving the original request. GCSB can extend that timeframe (see above). Such extensions must be signed off in the same manner as substantive responses.

Charges

34. Section 15(1A) of the OIA allows the GCSB to charge requesters for responses to OIA requests. Such charges must be reasonable and the requestor must be advised of the proposed amount to be charged if charges are to be set, whether the information will be released and the requester's right to seek a review by an Ombudsman. The sign-out process for this response must follow the usual sign-out process.
35. The Ombudsman's guidelines on charging state that charges cannot be imposed for time taken to consider whether or not the information should be made available. When deciding whether to impose a charge, the following factors may be made to determine whether a charge is reasonable:

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- a. staff time used preparing the information for release (including locating, reading, and supervising access to the information)
 - b. photocopying,
 - c. whether the charge might cause financial hardship for the requestor and
 - d. whether there is a public interest in the release of the information without a charge.
36. As per the guidelines provided by the Ministry of Justice on charging, Members of Parliament may be exempted from charges for official information provided for their own use. This may also cover political party parliamentary research units when the request for official information has the endorsement of a Member of Parliament.

Preparing a response

37. In preparing a response to a request the Privacy Officer must:
- a. identify all information that falls within the scope of the request,
 - b. determine whether any of the information that falls within the scope of the request needs to be withheld (this may require consultation with any business units related to the requested information),
 - c. prepare a cover sheet that clearly documents the reasons for any decision to withhold information, and
 - d. prepare a response to the requester for the Director to sign, following consultation with relevant business units and sign-off roles within the GCSB.

Information gathering

38. To determine whether information needs to be withheld, it is necessary to first conduct a search of all information repositories to determine what information is held that is within scope of the request. This may include a search through documents, a helpdesk call, asking business units related to the information, or a registry search. A helpdesk call will include a search of all GCSB databases where information may be stored about the request.
39. The Privacy Officer must identify all information related to an information request before responding.

Helpdesk calls

40. For all Privacy Act and OIA requests concerning information about a specific person, a helpdesk call must be made in order to determine what information (if any) the GCSB holds on the person. This is done regardless of the final response as all available information must be considered.

Withholding information

Grounds for withholding information

41. Once all information falling within the scope of a request has been identified, a decision can be made about whether all or some of that information ought to be withheld from the requester. Depending upon how much information is to be withheld, entire documents may be withheld, or documents may be released with certain information redacted.

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42. Information may only be withheld for those reasons identified in sections 6, 7, 9, 10 or section 18 of the OIA and sections 27, 28, 29(1) and 32 of the Privacy Act. The fact that information is classified or is operational in nature is not sufficient reason in itself for withholding the information.
43. The grounds for withholding information under the OIA and the Privacy Act include the following:
 - a. **Section 6 of the OIA and section 27 of the Privacy Act:** release would prejudice the international relations and/or national security of New Zealand.
 - b. **Section 7 of the OIA and section 27(2) of the Privacy Act:** release would prejudice the international relations and/or national security of Niue, the Cook Islands, Tokelau or the Ross Dependency.
 - c. **Section 9 of the OIA:** this section exists to protect things such as the privacy of natural persons, disclosure of economic information, maintain confidentiality and legally privileged information.
 - d. **Section 18 of the OIA and section 29(2) of the Privacy Act:** sets out the administrative reasons for refusal such as the information not existing, the volume of information requested being too great, and that the information requested will be publically available soon.
 - e. **Section 28 of the Privacy Act:** allows agencies to withhold information if the information protects a trade secret or would prejudice the person who is the subject or receiver of the information requested.
 - f. **Section 29 of the Privacy Act:** allows for refusal if the information requested would result in things such as an unwarranted disclosure of information concerning the affairs of a person (deceased or alive), prejudice the mental or physical health of a person, and a breach legal professional privilege.
44. In some instances, the GCSB is able to neither confirm nor deny the existence or non-existence of information. This is done in cases where declaration of the GCSB holding such information would prejudice the interests protected by sections 6, 7 or 9 of the OIA or sections 27 or 28 of the Privacy Act (see *requests from certain individuals* for more detail.)
45. It is common for information held by the GCSB to be withheld under section 6(a) of the OIA or s 27(1)(a) of the Privacy Act on the basis that releasing the information would prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand. However, all decisions to withhold information are made on a case-by-case basis.
46. Section 18A of the OIA stipulates that when refusing a request under section 18(f) of the OIA, the agency must consider whether fixing a charge or extending the time limit for the request would enable the request to be granted.

Redactions

47. Redactions must be made on the same basis as decisions to withhold entire documents. Redactions will be signed off in their proposed form as part of the usual sign-off process. All redactions will be finalised before they are then passed on to Registry to distribute.

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Consultation with external parties

48. Depending upon the information that falls within the scope of the request, it may be appropriate for the GCSB to consult with external parties before making a decision about whether to withhold information. Such consultation may be appropriate where another party is mentioned in a document or has been involved in the creation of the information. This consultation should take place as soon as possible to ensure the response is drafted in a satisfactory manner.

Responding to requests from certain individuals

49. Occasionally, requesters may ask for information that normally would be withheld under section 10 of the OIA or section 32 of the Privacy Act (neither confirm nor deny) but due to their identified unusual perceptions, the GCSB may choose to confirm that no information is held. The threshold for identifying someone as having unusual perceptions is necessarily high.
50. Unusual perceptions will usually be identified by repeated requests for information with potentially abusive/nonsensical language or requests. This will be assessed on a case-by-case basis. The Chief of Staff (or a delegate named by them) will make the final decision on whether the requester can be classified as having unusual perceptions.
51. For Members of Parliament who make Privacy Act requests, the GCSB may confirm whether information is or is not held on the requestor.
52. It must be recorded in the cover sheet if the nature of the requester has resulted in information being released that in other cases would not be so released.

Circulation of response and sign-off

Cover sheet

53. All responses must be accompanied by all information that led to the proposed response being prepared. This includes consideration being given to the following questions:
 - a. is it appropriate for the GCSB to respond?
 - b. is the information requested 'official information'?
 - c. does the response require an extension?
 - d. what databases need to be searched the required information or who needs to be consulted? What information will they give back/have they given back?
 - e. what are the reasons for withholding and under which section is information to be withheld?
54. See **appendix 1** for an example of a completed cover sheet.

Internal consultation on preparation of responses

55. In addition to the Director's sign-off and consulting with relevant business units about what information is within scope, the following teams and positions must be consulted with on any response to an OIA or Privacy Act request, and must approve the response and cover sheet information:
 - a. the responsible Unit Manager/Deputy Director;
 - b. external parties as appropriate;
 - c. the legal team;

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- d. the strategic communications team;
 - e. the Minister's Office; and
 - f. the Chief of Staff.
56. The Office of the Minister Responsible for GCSB and the NZIC Private Secretary are consulted by email on most OIA and Privacy Act responses. From time to time, the Minister's Office or Prime Minister's Office may provide guidance on the kinds of responses they would like to be made aware of. This guidance should be recorded.
57. The NZIC Private Secretary and the Minister's Office is prepared by scanning a copy of the response into the system, which is then emailed to the Minister's Office and the Private Secretary. These offices generally require at least 2 days for consultation.
58. The Director receives the entire file related to the response and signs both the accompanying cover sheet and the response letter.
59. Following sign off by the Director, the formal response to the request is then to be handed to a member of the Registry team where a copy of the response and all hardcopy documentation will be filed. The original response is sent to the requestor.

Response

60. Responses to information requests are in letter format. The response should be written as if the writer is the Director (using "I" instead of "the GCSB").
61. If the GCSB declines to provide the information requested then the grounds for withholding must be stated in the letter with reference to each part of the request. When withholding information, the GCSB must inform the person who requested the official information that *in accordance with section 19 of the Act, they have the right to seek an investigation and review of the refusal outlined above by way of complaint to an Ombudsman under section 28(3) of the Act.*
62. See **appendix 2** for an example of a response.

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APPENDIX 1:

Official Information Act Request Cover Sheet

2014-01-28- OIA Request - Joe Bloggs



Writer:	Joe Bloggs
Date Received in GCSB:	29 January 2015
Date Due Minister Office:	24 February 2015
Date Response Due:	26 February 2015
ID: Request	AXXXXXXX
: Response	AXXXXXXX

Please Consult with:	Consultation Complete?	
	Yes	Initials
Responsible DD/UM		
Communications		
Legal		
Associate Director		
Minister Responsible for the GCSB		
Minister Responsible for National Security and Intelligence		
Other relevant Department(s):		
OIA Administrator		

Author to complete	Yes	No	Initials
What specific Information has been requested?			
<ul style="list-style-type: none">All top secret documentation produced in the last 2 days			

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Is it appropriate for GCSB to respond?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Can the information be identified?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Is the Information held?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
- Document management system	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
- Registry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
- Help Desk Search (log help desk ticket)	<input type="checkbox"/>	<input type="checkbox"/>	
Is the Information held " <i>official Information</i> " or " <i>personal information</i> "?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Is it possible to make a decision on the request within the time limits of the Act?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Is there good reason to withhold some or all of the information?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
In what form should the information be released?			
Full disclosure	<input type="checkbox"/>		
Partial disclosure (provision of extracts)	<input type="checkbox"/>		
Summary	<input type="checkbox"/>		
Full Refusal	<input checked="" type="checkbox"/>		
<p>Justification for proposed response approach:</p> <p>The information requested identifies targets and capabilities which, if publically identified, will prejudice the interests protected by section 6(a) of the OIA.</p>			

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APPENDIX 2:



GOVERNMENT
COMMUNICATIONS
SECURITY BUREAU
TE TIRA TIAKI

PO Box 12-209
Wellington 6144
P +64 4 472 6881
F +64 4 499 3701
www.gcsb.govt.nz

[Insert file number]

5 February 2015

Joe Bloggs
123 Name St
Wellington

Dear Mr Bloggs

I refer to your request dated 28 January 2015 in which you request

- *All top secret information produced in the last 2 days*

I decline to provide the information you requested under section 6(a) of the Official Information Act 1982 on the grounds that disclosure would prejudice the interests protected by section 6(a).

In accordance with section 19 of the Act, you have the right to seek an investigation and review of the refusal by way of complaint to an Ombudsman under section 28(3).

Yours sincerely

Una Jagose
Director

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