

STATE SERVICES COMMISSION
TE KAWA MATAHIIO



Official Information Forum for Leaders

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STATE SERVICES COMMISSION
TE KAWA MATAHIIO



Proactive Release of Cabinet papers

ERIK KOED

Assistant Commissioner, State Services Commission

Proactive release of Cabinet papers



Proactive release of Cabinet papers is part of the Government's wider plan to improve openness and reflects its commitment to the international Open Government Partnership.

“This change is consistent with the spirit of the OIA which states that information should be made available unless a good reason exists for withholding it.”

– Hon Chris Hipkins

Key points

- Effective date is **1 January 2019**.
- Applies to all Cabinet and Cabinet Committee papers and associated minutes.
- But **excludes** Cabinet Appointments and Honours (APH) papers and minutes.
- Online publication within **30 business days**.
- **Proactive Release section** to be included in Cabinet paper.
- Related **key advice** papers.
- Thorough **due diligence** prior to publication.

Responsibilities



Ministers

- Approve release of Cabinet material in their portfolio
- Decide whether to release related key advice papers
- Joint papers require agreement of all Ministers
- May decide to issue press release



Agencies

- Build proactive release into internal processes and systems
- Support Ministers to prepare the release
- Carry out due diligence and quality assurance processes
- Publish information on agency website

What is required to be proactively released

Required

- Cabinet material - final versions of Cabinet papers (excluding APH papers), associated minutes and any attachments to the Cabinet material
- Cover sheet
- Redactions must include the reasons

Not Required

- Minister may decide to release related key advice papers (includes papers addressed to the Minister taking the item to Cabinet, seeking the Minister's agreement to recommendations subsequently decided by Cabinet).
- Information that would not be released under the OIA
- Exploratory advice and 'blue skies' thinking

Timeframes

30

30 business days of decision taken by Cabinet

UNLESS there's good reason not to publish all or part OR

A decision is made to delay (e.g. the Minister is out of the country)

Ministers can decide to release earlier

1

Day 1 is the day the decision is taken by Cabinet

**Business
Days**

Includes regional anniversary days

Excludes Saturdays and Sundays and public holidays

Excludes the period 25 December to 20 January inclusive

OIA request for the same information

Where an OIA request is received for the information and is due for response before it has been proactively released

AND

The Minister has a plan in place to release within the 30 business days time limit

AND

It is certain this will occur

THEN on a case by case basis:

- Section 18 (d) of the OIA may justify refusing the request on the grounds that the information is soon to be publicly available, OR
- If the requester is notified within the maximum statutory time limit for responding that the Minister has granted the request, then section 28 (5) in the OIA to release without undue delay may be satisfied if the information is released to the requester at the same time it is published.

Due diligence

Information that would have been withheld under the OIA

Application of the principles in the Privacy Act 1993

Consideration of national security

Information that must be withheld under other legislation

Potential civil or criminal liability

Defamation

Privacy of natural persons

Interests of organisations

Breach of copyright

Legally privileged material

Commercially sensitive

Breach of contract

Breach of law or statute

Whether breach would constitute contempt of court

Publishing Cabinet material

You need to ensure that the following actions have been undertaken before the information is published.



due diligence

Undertake a thorough final review process.

final version

Check material being published is the final version and any redactions needed have been made.

minute

Check the Cabinet committee minute has been confirmed by Cabinet.

approval

Minister approves final material for publication including related key advice papers.

cover sheet

Prepare a coversheet for the material (see CO (18) 4 appendix for template).

publish

Publish within 30 business days.

Cover Sheet

Refer to the Cabinet Office Circular CO (18) 4 appendix for an example of a cover sheet.

The cover sheet needs to include the reasons for any redactions.

The appropriate copyright statement for key advice and other papers from agencies other than public service departments needs to be inserted.

[Name of Minister and Portfolio]

[Name of package]

[Date of issue]

This/these documents have been proactively released.

[Date, title, author e.g. Office of XX Minister, Cabinet Office for minutes, agency for key advice]

[Explanation of material redacted e.g. some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.]

Key to Redaction Codes:

[Insert Official Information Act section and the explanation for that section]

Insert a Copyright statement

For Cabinet material and any public service departmental advice use this copyright statement

© Crown Copyright, Creative Commons Attribution 4.0 International (CC BY 4.0)

For key advice and other papers from agencies other than public service departments you will need to select the appropriate copyright statement for this information

Proactive release is becoming the new normal

- **Reduce time and effort – build-in proactive release from the start**
- Policy and Ministerials teams have shared responsibility
- Draft papers so that any information that needs to be withheld can easily be redacted
- Assess the material and identify any risks of releasing it more widely
- Record reasons for withholding any information
- Good record keeping is essential to assist the publication process
- Cabinet Office Circular includes guidance on due diligence – use this for any information being proactively released

This will make the final due diligence and quality assurance processes easier and quicker

Support

Cabinet Office Circular CO (18) 4

The Circular contains detailed guidance on the procedures to follow. Available on the new [Cabinet Office Shared Workspace](#) and on [DPMC's website under Publications](#)

Workshop for Ministerials/OIA teams

SSC will be running a workshop for Public Service departments' Ministerials/OIA managers and practitioners in late November.

Policy Managers' Forum

DPMC's Policy Project will be running a session at the Policy Managers' Forum in the new year.

Business day calculator

SSC is developing a business days calculator.

SSC Support line

Send enquiries about the proactive release of Cabinet papers to SSC at commission@ssc.govt.nz or phone [021 861 260](tel:021861260).

Other support

For specific concerns like privacy or security contact the Privacy Commissioner, the Protective Security Requirements team, the Office of the Ombudsman or your legal team.

Official Information Practice Investigations

Presentation to Official Information
Leaders' Forum

October 2018

The logo for the Ombudsman, featuring a stylized leaf icon to the left of the word "Ombudsman" in a bold, sans-serif font. The background of the slide is a blue gradient with a large, faint, stylized leaf graphic and a photograph of a plant with small white flowers against a clear blue sky.

Ombudsman

What are we going to cover today?

1. History – why the team exists
 2. Purpose and strategic outcomes
 3. Agency selection
 4. Methodology – process of the investigation
 5. What's happened so far
 6. What's next?
-



Development of Official Information Practice Investigations



- *Not a game of hide and seek* – released and tabled in Parliament December 2015
 - Report of [former] Chief Ombudsman Dame Beverley Wakem on an investigation into the practices adopted by central government agencies for the purposes of compliance with the Official Information Act 1982
 - Recommendation 48
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Development of Official Information Practice Investigations

In May 2017 the Chief Ombudsman published Strategic priorities for improving the operation of the OIA, which included:

- The establishment of a monitoring programme of agencies' OIA practices and capability

A team set up specifically tasked with proactively investigating agencies' official information practices

Official Information Practice Investigations - Indicators

Not a game of hide and seek identified five key areas that have a significant impact on OIA compliance by government agencies:

- Leadership and culture
 - Organisation structure, staffing and capability
 - Internal policies, procedures and resources
 - Current practices
 - Performance monitoring and learning
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Summary of dimensions and elements that have an impact on official information good practice

OUTCOMES AND IMPACTS



DIMENSIONS

ELEMENTS

LEADERSHIP AND CULTURE

- Ministers, chief executives, senior leaders, and managers demonstrate a commitment to the agency meeting its obligations under official information legislation, and actively foster a culture of openness within the agency
- Senior leadership have established an effective official information strategic framework which promotes an official information culture open to the release of information
- Senior leadership demonstrate a commitment to proactive disclosure of information and public participation, with clear links to the agency's strategic plans thereby creating a public perception, and a genuine culture, of openness

ORGANISATION STRUCTURE, STAFFING AND CAPABILITY

- The agency has the capacity to discharge its official information obligations with clear and fully functioning roles, accountabilities, reporting lines, delegations, and resilience arrangements
- The agency has the capability to discharge its official information obligations, for example training, and the availability of official information and meeting resources to all staff

INTERNAL POLICIES, PROCEDURES AND RESOURCES

- The agency has official information policies, procedures, and resources that are accurate and fit for purpose
- The agency has appropriate record keeping and information management policies, procedures, and resources
- The agency has accurate and comprehensive proactive release policies, procedures, and resources

CURRENT PRACTICES

- The agency's official information practices demonstrate understanding, compliance, and commitment to the principles and requirements of official information legislation
- The agency has good record keeping and information management practices
- The agency's current practices reflect good proactive release policies

PERFORMANCE MONITORING AND LEARNING

- The agency has an established system for capturing and analysing data to inform meaningful and appropriate performance measures
- There is regular reporting about the agency's management and performance in respect of official information requests
- The agency learns from data analysis and practice

Agency selection

- Jurisdiction
 - Scale of the public sector
 - Selection process
 - In 2018 – completed four investigations
-



Methodology – Process of an investigation

- Notification
 - Step 1 – desk research, agency survey, staff survey, public (requestor) survey
 - Step 2 – Meetings with key staff in relevant positions
 - Step 3 – Provision of ‘fact checking document’
 - Step 4 – Draft report for comment
 - Step 5 – Final report tabled in Parliament and published on website.
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Summary of what we've found so far



What is going well:

- Leadership and culture – we found generally a positive culture in the agencies about the importance of the OIA
 - Organisation structure, staffing and capability – generally agencies operated a model fit for the size of the agency to process OIA requests
 - Internal policies, procedures – overall generally useful and sound OIA guidance for staff
 - Current practices – some good practice developing around proactive release, and improvements to timeliness
 - Performance monitoring and learning – taking some steps to use data to learn from and enhance OIA performance
-

Summary of what we've found so far

Common areas for improvement:

Leadership and culture

- Clearer messaging about the importance of the OIA and openness generally from leadership
- Improving web presence for official information

Organisation structure, staffing and capability

- Internal training, including targeted training for decision makers and media teams
 - Clarifying delegations and some concerns with agency capacity to deal with requests during busy periods, or in the absence of key staff
-

Summary of what we've found so far

Common areas for improvement:

Internal policies, procedures and resources

- Development of proactive release policies
- Some concerns with identifying, accessing and collating information requested under the OIA
- Record keeping policies on how to store information could be improved

Current practices

- Need to clarify the role of the Minister in departmental OIA responses
 - Ensure all media requests are handling in accordance with the OIA
-

Summary of what we've found so far

Common areas for improvement:

Performance monitoring and learning

- Although some performance data is collected, this data could be better analysed to monitor trends, and feed into business planning
 - Include OIA requests handled by the media team in OIA statistical reporting
 - Record keeping of the decision making process on OIA requests should be improved
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What's next?

Complete eight this year – with a focus on Local Government.

The first four are underway:

- Callaghan Innovation
- Horowhenua District Council
- Christchurch City Council
- The Treasury

You can read the first four reports and summaries [here](#)



OIA leaders forum October 2018

DOC's lessons
from the
Ombudsman's
investigation



Department of
Conservation
Te Papa Atawhai

Our model

- OIAs are devolved to the business to complete.
- Delegations for writing and approval of OIAs sit at the third tier.
- Standards, advice and quality assurance sits at the centre in the Government Services team.
- The level of OIA maturity & understanding is relatively low in the business.





DOC's approach

- Commitment from the D-G
- Regular updates to the business from the D-G
- Engaged with the Office of the Ombudsman early on
- Encouraged staff to get involved
- Supported staff who were being interviewed
- Recognised the benefit the investigation can provide – part of our messaging

Key messages...



- Get buy-in from the top
- Value the opportunity that the investigation presents
- Be prepared, check and understand why you do what you do
- Have a plan. Dedicate resource to this as there is quite a bit of work
- Don't rely on having been the subject of an investigation before, this is different
- Keep communicating with staff and the Ombudsman's Office
- Provide detailed feedback on the action points
- Be prepared for the work after the report

Questions



Ministry for Culture and Heritage Manatū Taonga,

Office of the Ombudsman review into
Official Information Act 1982 compliance
and practice

Presentation to OIA Leaders Forum, 31 October 2018

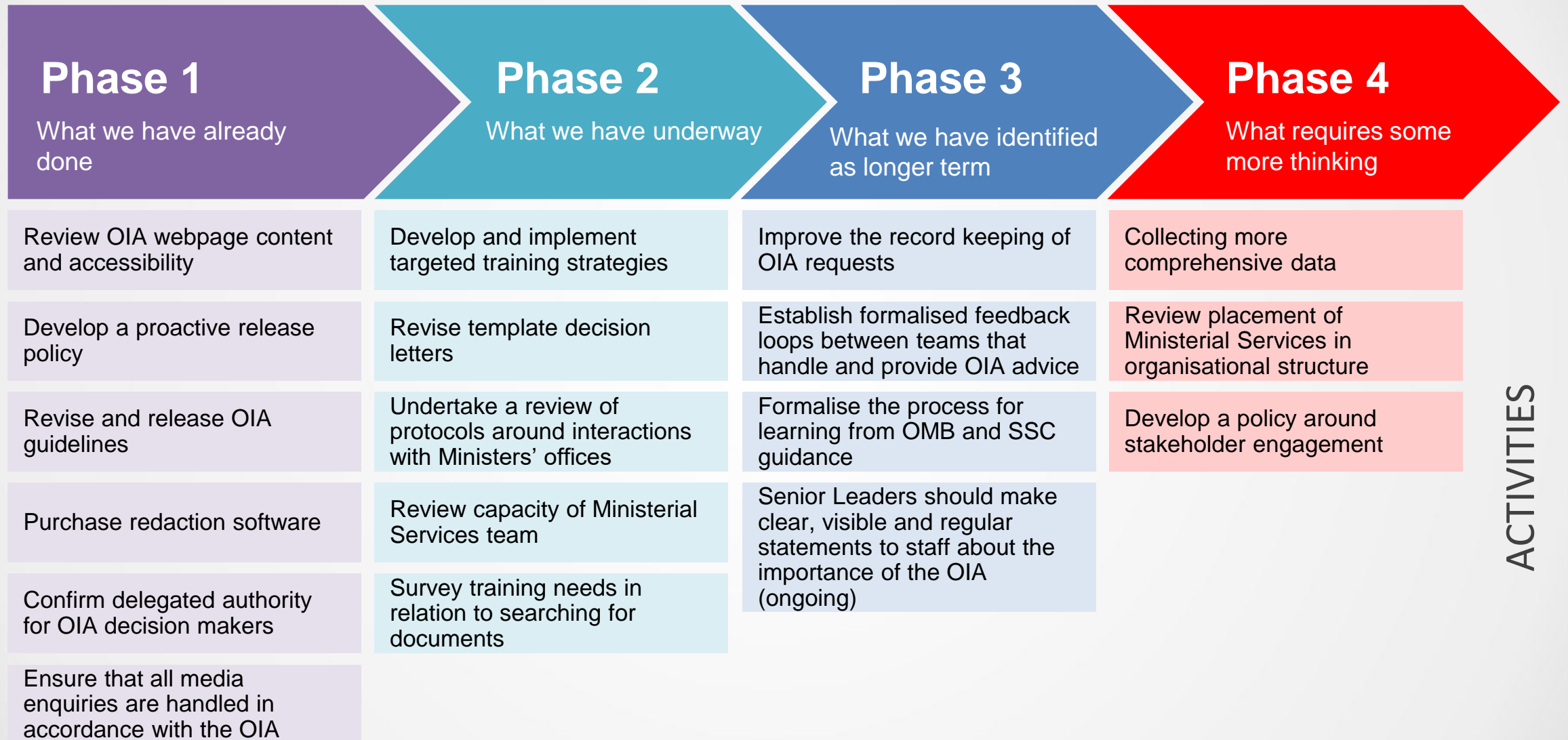
OMBUDSMAN REVIEW PROCESS

- Meet with the Chief Ombudsman and other Ombudsman staff
- Staff survey and stakeholder survey
- Agency survey
- Interviews with staff
- Evidence gathering
- Provisional opinion
- Final opinion
- Publish

WHAT DID THE OMBUDSMAN FIND?

“I have not identified any conduct by the Ministry that was wrong, unreasonable or contrary to the law in OIA terms and as such have not made any formal recommendations.”

The Ministry's proposed implementation plan (snapshot)



ACTIVITIES

WHAT DID THE MINISTRY FIND?

- Great internal feedback
- Involved interview process
- Agreement to look into recommendations
- Evidence gathering
- Provisional opinion to final opinion
- Ongoing work programme

Questions?