

STATE SERVICES COMMISSION
TĪ KAWA MATAHIIO



Proactive Release of Cabinet papers

STEPHEN MOORE

Managing Principal, 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

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

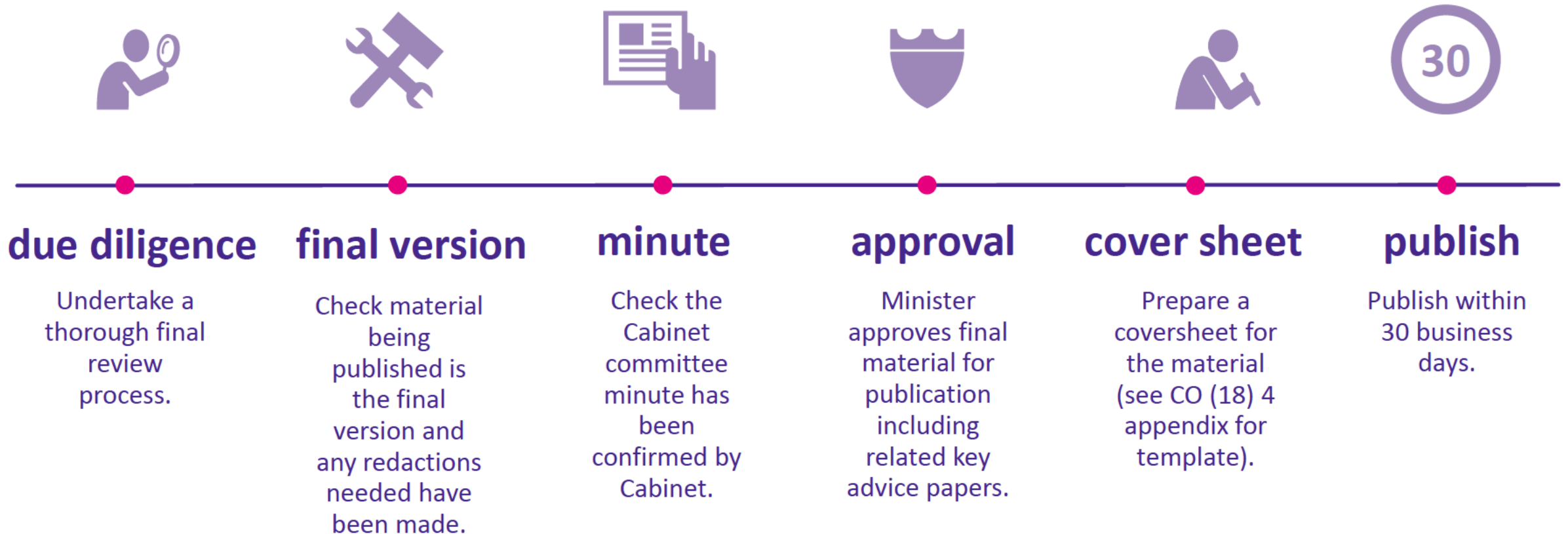
The practicalities of publishing

- Published on the agency's website (or linked to if published elsewhere)
- Any related Ministerial press release is published on the Beehive website
- The publisher (the agency) is responsible for ensuring:
 - due diligence process has been conducted
 - Minister has approved the release and publication
 - version being released is the final lodged and subject to any amendments requested by Cabinet
 - the minute has been confirmed by Cabinet
 - all the relevant documents – paper, minute, appendices and attachments – are included
- It should be text searchable, and meet government web standards
- You may need to provide an accessible alternative to some information

If your agency hasn't done so already this is a great time to put in place wider proactive policies and processes

Publishing Cabinet material

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

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

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.

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:

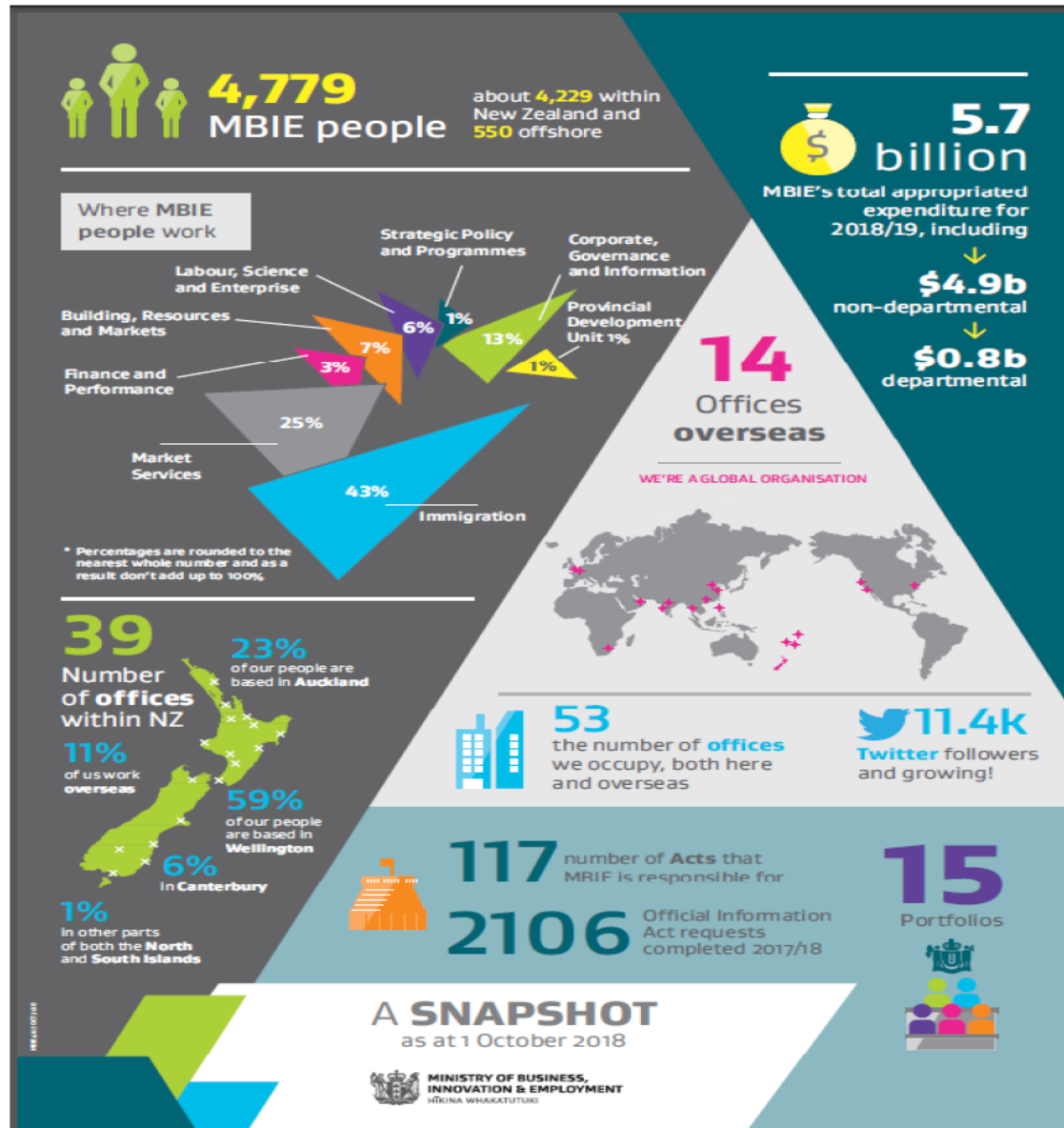
- Section 18 (d) of the OIA may justify refusing the request on the grounds that the information is soon to be publicly available, OR
- If the requester is notified within the maximum statutory time limit for responding that the Minister has granted the request, then section 28 (5) in the OIA to release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

MBIE Case Study – Proactive Release



MBIE's Proactive Release

A snapshot of MBIE



2106 OIA requests 2017/2018

Approx 700 Weekly Reports produced

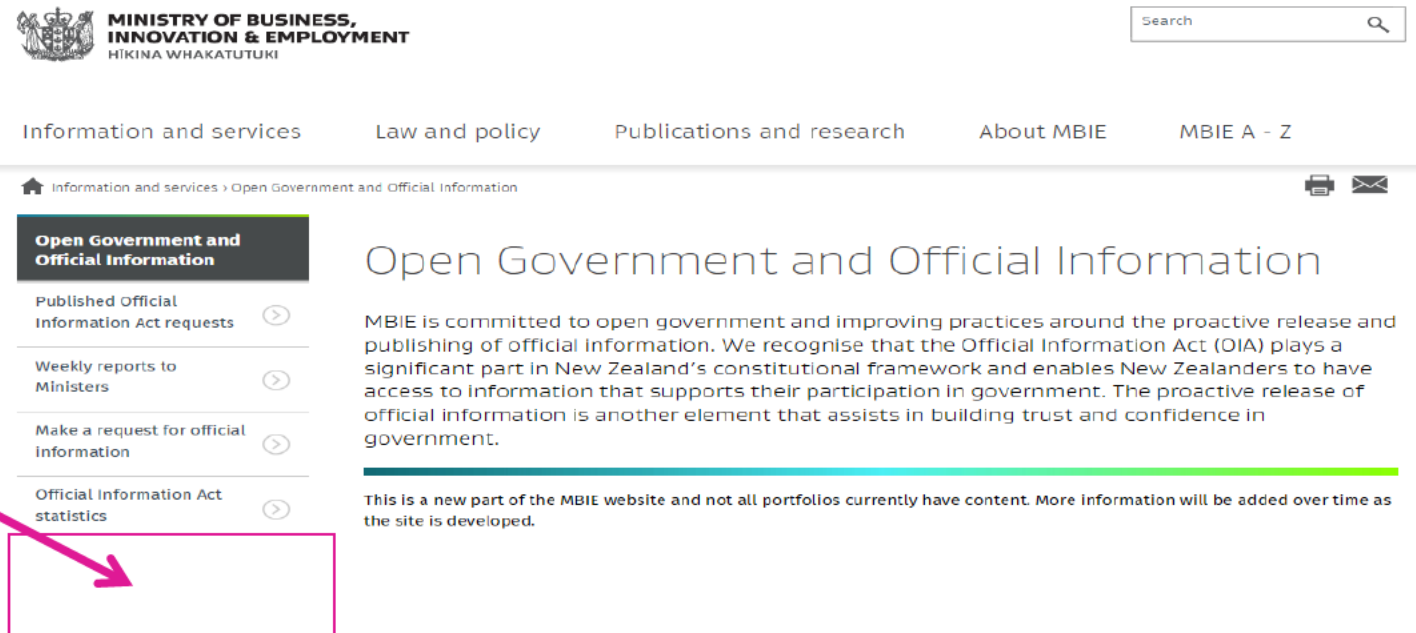
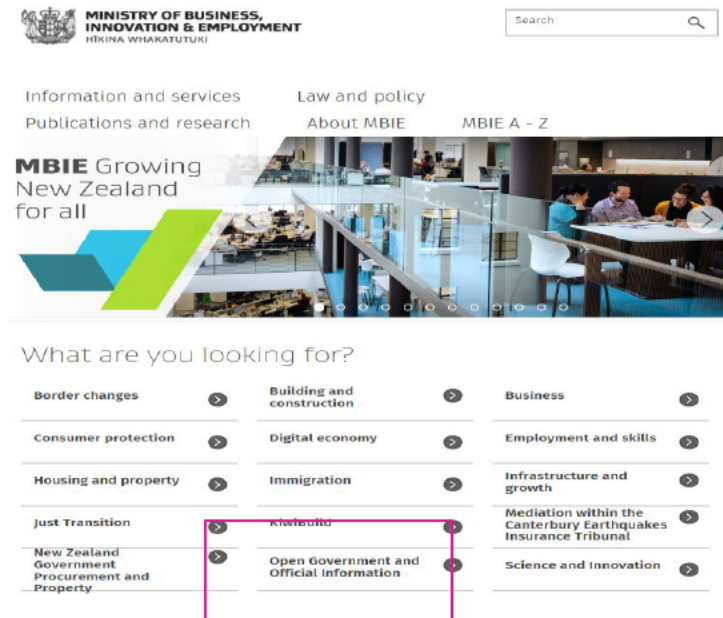
250 - 300 Cabinet papers produced

43 websites

MBIE's Proactive Release

What MBIE has been doing

- MBIE is already publishing information online. We have support from our SLT and Ministers to do more
- To date, publishing Cabinet material has been ad hoc
- **Next year we may publish as many as we have published in the past 6 years**
- We have set up an Open Government and Official Information page on our main website and are setting up a proactive release tab to house all releases together



MBIE's Proactive Release

The PDU challenge

1. Accessibility

- Challenge
- Mitigation

2. Writing style

- Free and frank
- Education – language, containing info

3. Timeframes

- Expectation
- Reality

MBIE's Proactive Release

Service design approach

What have we done?

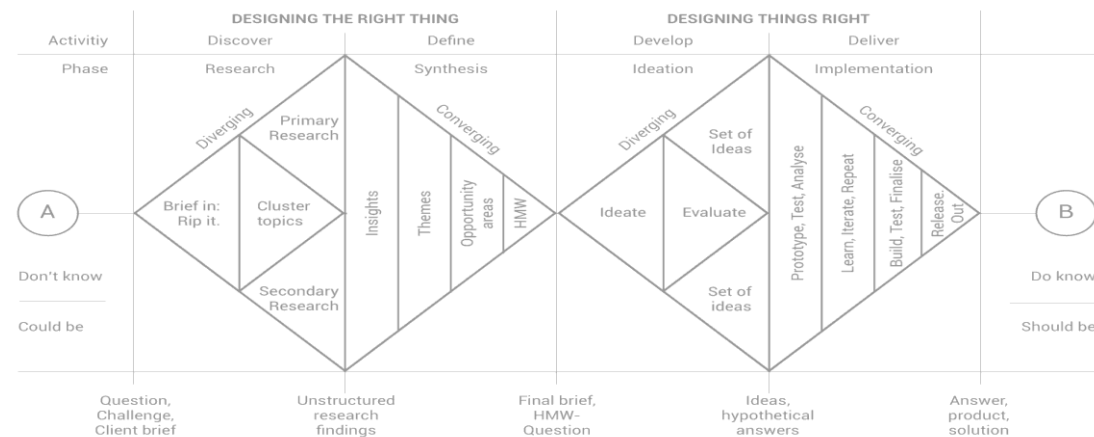
- 2 week design sprint to understand our current state and what could be
- Small team of 6 co-located
- Current state processes and possible solution option for a new workflow and resource requirements developed
- Further detailed design happening now
- Comms and engagement across the ministry and with Ministers
- Looking at all options including a phased approach

MBIE's Proactive Release

Service design approach

Beyond initial implementation

- Service Improvement Programme to develop **innovative solutions** for open, transparent and accessible MBIE
- Using a design-led approach to address **prioritised opportunities**
- Seeking **user perspectives** for truly human-centred solutions



MBIE's Proactive Release

Service design approach

Next steps

How can we continue to collaborate across agencies for better outcomes?

Get in touch if you're interested in discussing our Service Improvement Programme.



Proactive Release: Fees-Free

Ministry of Education

Mike Scott & Jon Rolfe

Context

- Proactive release programme in place February 2018
- Over 2,300 papers (Briefings, Cabinet Papers, etc)
- 600 OIAs per year
- Three proactive release streams
 - Monthly proactive release process
 - OIA publishing
 - One-off “package” proactive releases
- Fees Free – initial release of 2017 papers (February 2018)

Proactive release of Fees-Free advice

- Introduction
 - First 100 days advice experience
- Writing advice
 - The importance of the proactive release clause
 - Consultation and planning
- Things to consider
 - Working with the Minister's office
 - Applying the OIA
- Publication
 - Making sure advice is accessible
 - [Website](#)

Final Thoughts

- Build-in proactive release from the start
- Structure documents to simplify redaction
- It takes time to change an organisation's thinking
- Stakeholders will have different risk thresholds
- It will take longer than you think