



Te Kawa Mataaho
Public Service Commission

Official Information Forum

28 March 2022

*Microphones off please,
cameras optional*



Agenda

Impact of COVID on official information functions

Te Kawa Mataaho Public Service Commission, with Office of the Ombudsman and meeting attendees

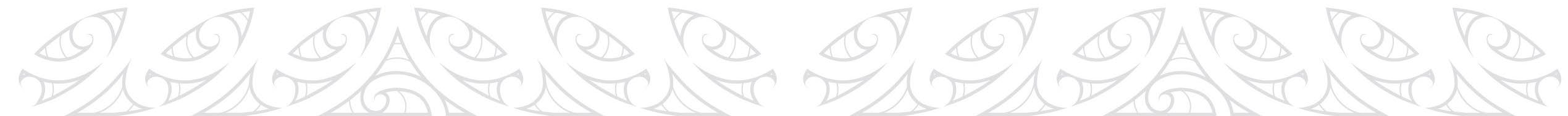
OIA statistics to 31 December 2021

Te Kawa Mataaho Public Service Commission

Forum plans for 2022

Te Kawa Mataaho Public Service Commission

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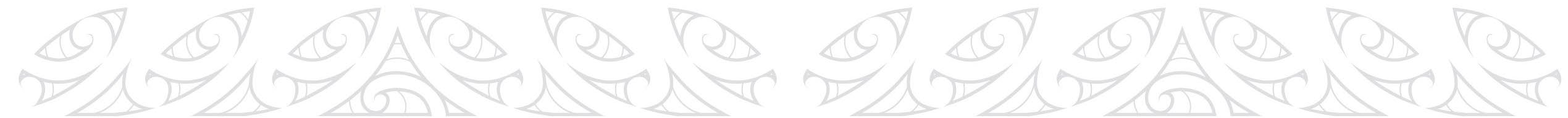
Impact of COVID on official information functions

Impact of COVID on official information functions

In February the Office of the Ombudsman updated its FAQs: official information requests during COVID-19 guidance.

The FAQs cover tools and strategies such as:

- proactive communication
- effective triaging of requests
- good communication with requesters
- making reasonable use of the ability to extend
- good business continuity planning.



Official Information Forum

March 2022

The logo for the Ombudsman, featuring a stylized leaf icon to the left of the word "Ombudsman" in a bold, black, sans-serif font.

Ombudsman

The impact of COVID-19

- Access to information is vital – including public health, welfare and changes to administration of government
- OIA requests are core business –robust business continuity plans
- Unprecedented pressure for some agencies, Ombudsman will take extenuating circumstances into account re timeliness complaints
- The statutory timeframes remain the same – agencies must respond ***as soon as reasonable practicable***
 - Track trends and early plans for upscaling resource
- Good communication is vital – and effective internal processes

OPTIONS for agencies

- Consider whether a reasonable extension is warranted – agencies can take Covid-19 into account when deciding ***what is a reasonable period of time***
- Contact the requester – keep them informed – likely to be more understanding if not able to meet timeframes
- Provide a staged reply – if part of the request is good to go – sent it out
- Use the others mechanisms in the OIA for handling requests.
 - Clarification – broad and ill-defined requests
 - Form of release/proactive release
 - Charging/ administrative refusals
 - Phase the release of information

Principle of Availability – section 5

When deciding whether official information should be released, a local authority must follow the principle that:

the information shall be made available unless there is good reason for withholding it.

Statutory obligations

- To provide reasonable assistance to a requester to make a request which can be responded to under the Act (section 13)
- To collate and review each piece of information against the withholding criteria (per High Court in *Kelsey*)
- To make and communicate a decision to the requester as soon as **reasonably practicable and within time limits**
- To give reasons for any refusal and advise the requester of their right to complain to the Ombudsman
- To release any information without undue delay

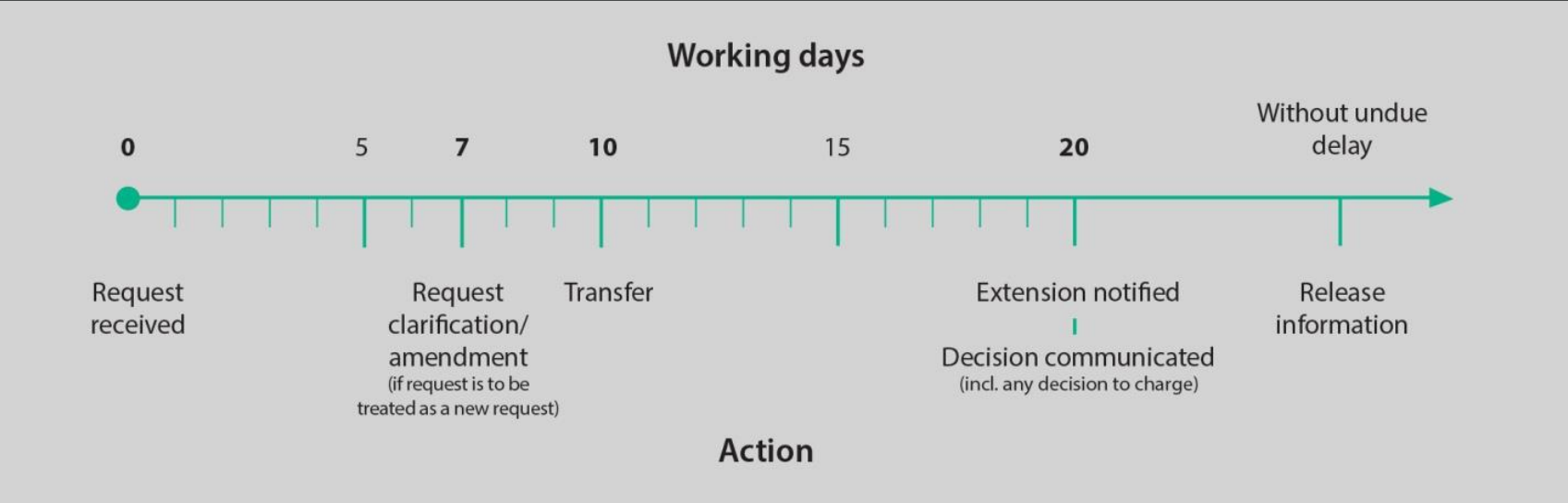
Limited reasons to refuse an OIA request

Most OIA requests will be under **Part 2 of the Act**

Part 2 requests may only be refused for one of the reasons set out in Parts 1 and 2 of the Act, most commonly:

- *administrative reasons* (section 18)
- *conclusive reasons* (section 6) and *special reasons* (section 7)
- *good reasons* (section 9)

Maximum time limits under the OIA



Maximum time limits under the OIA

- **The count starts** on the day after receipt of the request
- **7 days** to engage with the requester to clarify a request
- **10 days to transfer a request** to another local authority or agency or to a Minister
- **To make a decision and communicate it** to the requester *‘as soon as reasonably practicable and in no case later than 20 working days after the day on which the request is received’*
- **Make available any information** you have decided to release without *‘undue delay’*

Ombudsman statement on response times

- Agencies maintain awareness that access to information is vital
- Urging agencies and requesters to act fairly and reasonably
- Agencies keep Ombudsman informed about pressures
- Taking extenuating circumstances into account for delays/extension complaints
- Requesters maybe more amendable to extensions if give a ***realistic understanding*** of the competing pressures impacting on timeframes
- Need for transparency in relation to certain key areas.

COVID-19 – Difficulties with access to information (lockdown)



- Lack of access due to physical location/staff absences
- Make reasonable enquiries to ensure not accessible remotely
- Consult with staff about how may be able to access physically
- Communicate with requestor – may be able to make use of extension
- If unlawful or an offense to access information then section 18(c)(i) applies – making the information available would be contrary to a specified enactment.
- Lack of access to manual redaction – make a decision and provide later (without undue delay).

COVID-19 – key tools and strategies



- Communicate with public
- Triage requests – scope, urgency/priority
- Communicate/consult with individual requesters
- Mechanisms in OIA for handling / refusing requests
- Grant request – release information later without undue delay

Amended or clarified requests – time limits

- Sections 15(1AA) and 15(1AB) of the OIA deals with '*amended or clarified requests*'
- If a request is amended or clarified after it is made, it can be treated as a new request which replaces the original one
- This also re-starts the statutory time limit for responding:
 - where the amendment or clarification was sought by the local authority not more than 7 working days after receiving the original request
 - The amendment or clarification is done entirely at the requester's prerogative

Extending the maximum time limits

- In certain circumstances it is permissible to extend the time limits for transferring a request or for making a decision on a request
- An extension may be made if:
 - the request is for, or requires searching through, a large quantity of information and doing this would unreasonably interfere with the operations of the agency
 - the agency needs to consult others to make the decision and because of this, a proper response to the request can't reasonably be made within the original time limit
- The extension must be for a reasonable amount of time in the circumstances

Consulting another party

- OIA recognises that agencies may **consult another party** before making a decision on a request
 - The third party **cannot veto release** – the decision remains with the local authority's authorised decision-maker
 - The intention of consultation is to provide the decision-maker with information necessary to make a good decision on the request
 - It may be necessary to consult with other people to better understand what harm might eventuate
-

Transferring a request

An agency **must** transfer a request to another agency if:

- the agency doesn't hold the information but believes another central or local government agency does; or
- the agency does hold the information, but believes it is more closely connected with the functions of another central or local government agency

Must be done within 10 working days (unless extended)

Must advise the requester of the transfer.

Form of release – section 16 OIA

The requester is entitled to receive information **in the way they prefer**, which they have to specify, **unless doing so would**:

- impair efficient administration
- be contrary to a legal duty, or
- prejudice certain interests protected under OIA

The **agency otherwise has discretion** to provide it by way of:

- providing a copy
 - allowing an inspection of the document
 - providing a summary or excerpts of the document
 - oral briefing
 - providing a transcript, or video/disc/tape
-

Proactive release

Proactive release is the disclosure of information without a request

- Usually done by way of publication on the internet
- Not just publishing OIA responses, however that is part of a good proactive release regime and is strongly encouraged
- A good example is Cabinet's proactive publication of Cabinet Papers, in line with the Cabinet Office circular CO(18) 4, which includes handy reference to:
 - Creating information with a view to proactive release;
 - Due diligence in ensuring no harm with arise through release.

Imposing conditions

OIA recognises that information may be released subject to conditions

- Often this looks like :
 - release subject to an embargo on publication
 - release only to the requester's representative
 - release on the condition any publication is accompanied by contextual statements/information
- Conditions are not enforceable under OIA – rely on agreement, trust or formal contract
 - Might be quasi-enforceable where the requester is subject to professional obligations (e.g. lawyer, journalist)

Ombudsman's training and guidance functions

The Ombudsman assists agencies on the OIA by producing:

- Guides
- Opinions and case notes
- OIA working day calculator

The Ombudsman's Learning and Agency Development team is available to:

- discuss issues and/or tricky cases
- provide training on request

Phone: 0800 802 602. Email: info@ombudsman.parliament.nz

Website: <http://www.ombudsman.parliament.nz>

Impact of COVID on official information functions

Discussion in small groups about what you are seeing in your agencies.

Quick introductions – name and agency - and nominate a scribe for your room.

We won't have time for report back from every room, but will grab a selection or take volunteers. Use the “hand up” function if you have a burning question or observation you think would be of interest to the whole group.

Team scribes, please share what you've heard or learned in the main group chat.

We'll send these out to attendees after the meeting.



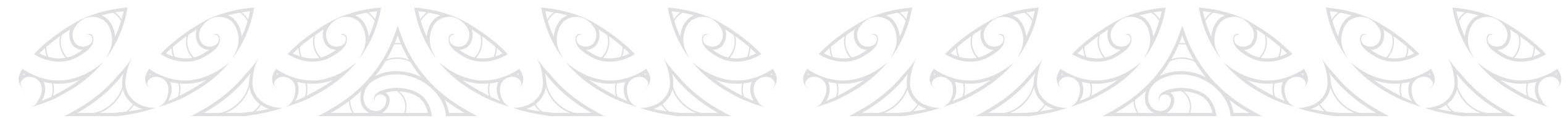
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Topic 1: Business continuity and dispersed or absent workforces

Many agencies have moved to split rosters and/or working from home to manage business continuity. Despite that, high levels of absences through illness are happening, and key staff have limited availability as they focus on, or are redeployed to, COVID response work.

What pressures or issues have these different working arrangements caused? (e.g. sign outs, consultation with subject matter experts, accessing physical records)

How is your agency managing it? What might you do differently if setting up from scratch again now?



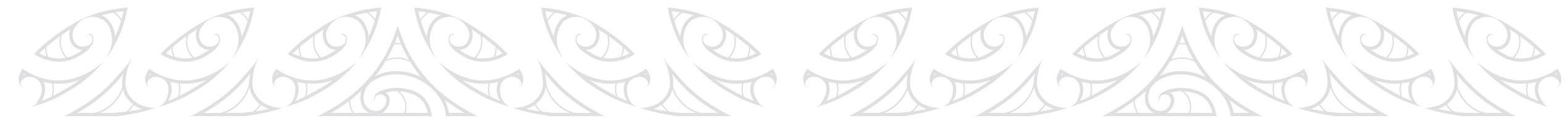
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Topic 2: Looking after your teams

What have you put in place to monitor staff moral and wellbeing while you are in different locations?

How are you monitoring workloads, given some team members may have sick family members, children home from schools, or other dependents?

How is your team capacity/headcount compared to what you would normally have?





Pātai/Questions?



OIA statistics to 31 December 2021
Te Kawa Mataaho Public Service Commission

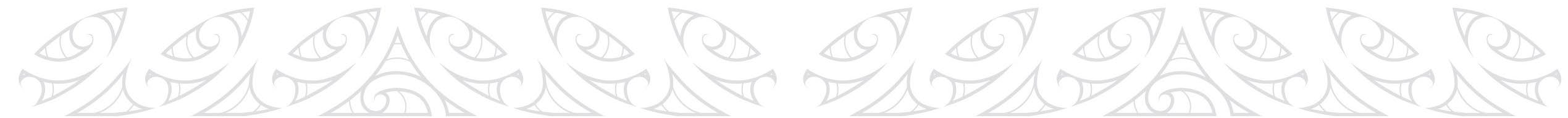
Official Information Act statistics to December 2021

Across 121 agencies (i.e. excluding Police and NZDF, which we report separately) 29,681 official information requests were collectively completed from July to December 2021.

This is a 7.1% increase in volume on the previous six months.

For the current reporting period, 58 agencies completed 100% of their OIA requests within the legislated timeframe

This is compared to 61 and 54 in the last two reporting periods, respectively.

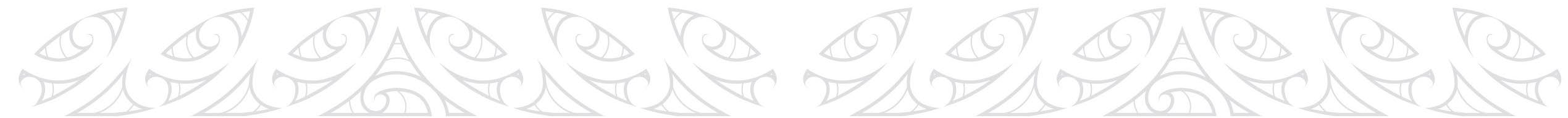


Official Information Act statistics to December 2021

Overall, agencies responded to 28,885, or 97.3%, of requests within legislated timeframes, down from 97.8% in the January to June 2021 period, but up on 97.2% in the July to December 2020 period.

Public Service department's volumes were up 25.5%, on top on the 9.5% increase in the last period. Culture and Heritage were up 94%, DPMC up 79%, MBIE up 15% and the **Ministry of Health up 161%** (to 2,720).

District Health Board volumes were up 24% (to 1,965).



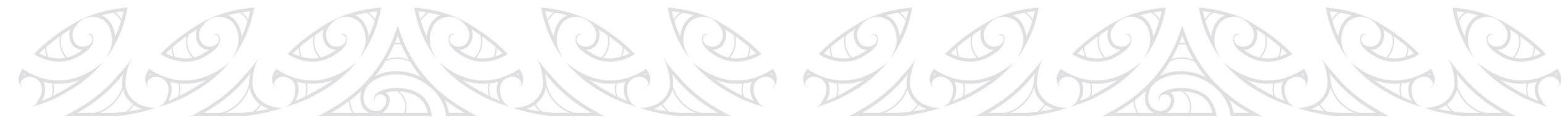
Official Information Act statistics to December 2021

Almost two thirds of agencies completed more OIA requests.

Over half of all requests were completed by three agencies: EQC, Corrections and Health.

Publication of OIA responses published increased to 2,594 (up 33.5%), by 64 agencies.

DHBs continue to perform well publishing, with 16 out of 20 publishing over 1,000 requests between them.

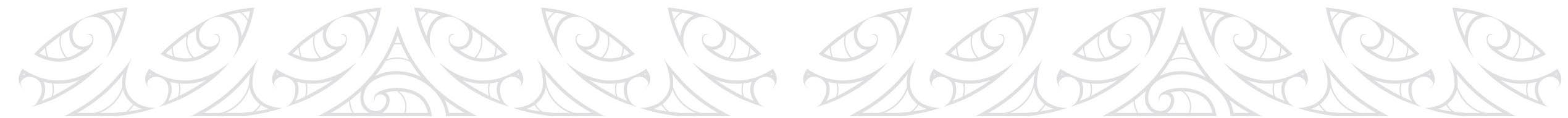


Official Information Act statistics to December 2021

If you want to do further analysis, a full dataset of all OIA statistics since 2015 is published, on both the Commission website and www.data.govt.nz at this location:

- <https://catalogue.data.govt.nz/dataset/official-information>

The proactive release locations for OIA responses and Cabinet papers that agencies provide to us when the statistics are collected are also published on both websites.



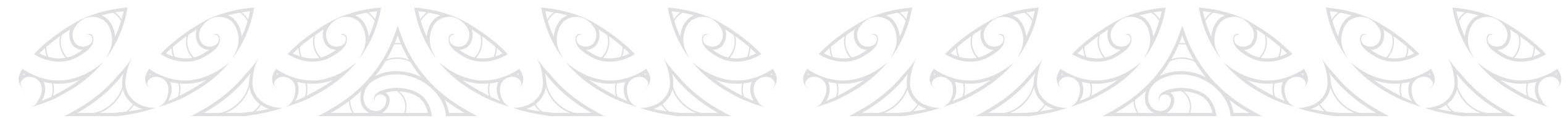
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Complaints received by the Ombudsman about the agencies we report on were up 19%, but we are yet to see that translate across to some of the metrics we monitor.

Complaints formally notified to agencies were down 17% (down from 197 to 158).

Complaints completed regarding delays remain around 0.6% of requests completed, steady over the last three years.

We'll look out for a flow on effect from the increased complaints in the outcome data reported by the Ombudsman next period.





Pātai/Questions?

Forum events in 2022

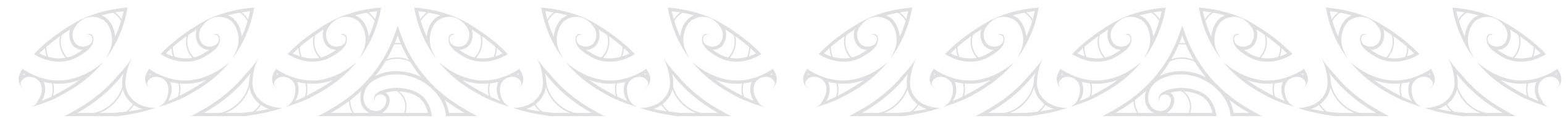
All event dates for 2022 are on the Forum webpage:

<https://www.publicservice.govt.nz/resources/oia-forum/>

These include three new practitioner's events, co-presented by the Office of the Ombudsman. These are an introduction to principles, training resources and networks for those new to this area of work.

The May agenda is currently being finalised.

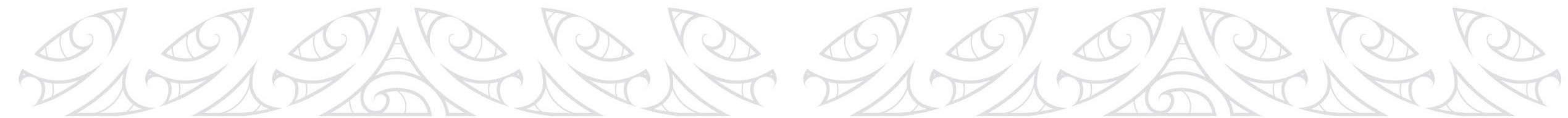
Any suggestions, or requests for topics to be covered are welcome.



Here to help

If you need advice or assistance, or have topic for the Forum to consider, please contact Te Kawa Mataaho on OIAForum@publicservice.govt.nz

Check out our online resources:
<http://publicservice.govt.nz/official-information>





Te Kawa Mataaho
Public Service Commission

Tēna rawa atu koe
Thank you very much

