



Chief Executives and Ministers should be clear about their respective roles and decision-making responsibilities in relation to Official Information Act 1982 (OIA) requests. Some OIA requests received by agencies will need to involve the responsible Minister. It is important for agencies to have clear and transparent processes for dealing with such requests.

This guidance provides a useful starting point for agencies and their Ministers to discuss and agree upon clear criteria for managing OIA requests involving the Minister.

Cabinet Manual Guidance

The Cabinet Manual provides the primary set of guidelines adopted by each administration as the standard of conduct. It outlines, among other things, the relationship between Ministers and the State sector, and how this should be managed.

The Cabinet Manual states that as a general rule, agencies should inform Ministers promptly about matters of significance within their responsibilities, particularly where these matters may be controversial or may become the subject of public debate. This is often referred to as the ‘no surprises’ approach. Responses to an OIA request may need to be advised to the Minister’s office under a ‘no surprises’ approach.

The Cabinet Manual advises chief executives to exercise judgement about how and when to inform a Minister about any matter for which the chief executive has statutory responsibility and to ensure that the independence of the chief executive’s decision-making process is maintained.

To achieve this, agencies will need to work with their Minister to identify which OIA requests may need their involvement and the appropriate mechanism to handle them.

Consulting the Minister

Responsible Ministers may have a legitimate interest in OIA requests received by their agencies. Agencies may consult Ministers about the decision they propose to make on an official information request.

There are a number of reasons why agencies may wish to consult Ministers about agency OIA requests. These include:

- Making decisions about whether a request should be transferred to the Minister for response;
- Identifying relevant information that may be within the scope of the request;
- Providing an opportunity for the Minister to identify any prejudice from release of the information in terms of section 9 of the OIA, including considering whether any of the “good government” withholding grounds may apply.

Agencies should consult with the Minister where the requested information:

- Relates to or could affect the functions or activities of the Minister;
- Relates to Cabinet material;
- Was generated by or on behalf of the Minister;
- Is sensitive or controversial;
- Is likely to be published in the news media or debated in the House.

Agencies should provide the Minister with all information necessary for informed consultation, including the request, the information at issue, and the decision the agency proposes to take. The Minister should respond to all consultations as promptly as possible, including advising the agency if more time is required so the agency can consider whether it will be necessary to extend the maximum 20 working days it has to make a decision on the request.

The Minister should provide appropriate input in response to agency requests for consultation. Appropriate input means comments and suggestions regarding:

- The proper application of the withholding grounds and the public interest test;
- The release of additional information, including explanatory material to place the information being released in its proper context;
- The proactive release of the same information to others, provided there is no undue delay in providing that information to the requester.

Agencies should carefully consider the input of the Minister on an OIA request in good faith and with an open mind. There can sometimes be differences of view between agencies and Minister on the best approach to agency OIA requests. Where there are differences, agencies should carefully consider the viewpoint of the Minister before deciding whether that input provides a reasonable basis for changing its proposed decision on the request. Agencies should proceed with a decision on an OIA request if the Minister does not respond to the consultation.

Transfers Between Ministers and Agencies

Agencies must transfer all or part of an OIA request to the Minister under section 14 of the OIA where:

- the requested information is not held by the agency but is believed by the person dealing with the request to be held by the Minister; or
- the requested information is believed by the person dealing with the request to be more closely connected with the functions of the Minister.

The need for transfer will be determined on the facts of the particular case and in consultation with the Minister's office. In the absence of these circumstances responsibility for deciding on the request rests with the agency. However, this does not prevent an agency consulting the Minister before making the decision.

Relevant matters in determining whether information is more closely connected with a Minister include that Ministers:

- take significant decisions and determine government policy collectively, through the Cabinet decision-making process;
- exercise statutory functions and powers under legislation within their portfolios, within the collective Cabinet decision-making context;
- determine both the policy direction and the priorities for their departments;

- are accountable to the House for their policies, their own performance, public spending, and the performance of entities within their portfolios.

If the information requested relates to executive government decision-making, and release could prejudice that, then transfer to the Minister is appropriate.

Disagreements about agency OIA requests

There may be occasions where Ministers and agencies disagree over whether information should be released in response to an agency OIA request. If consultation leads to disagreement about the appropriate response to a request, this is not, in itself, a reason to transfer. An agency must have a genuine belief that the information is more closely connected with the Minister's functions before transfer can legitimately occur. The Cabinet Manual [Chapter 8] provides direction on how to approach this issue:

On being consulted, the Minister may take the view that information that the department considers should be released, should not be released. In such a case, transferring the request to the Minister may be an appropriate way forward, if the requirements of section 14 of the Act can be satisfied. Each case of this kind needs to be handled carefully at a senior level within the agency, with reference to the Minister if necessary. Where the request is not transferred to the Minister, the views of the Minister are not determinative, and an assessment needs to be made by the department as to whether any of the withholding provisions apply.

Notifying Ministers of Decisions on Agency OIA Requests

Agencies may decide to notify the Minister about decisions on agency OIA requests. This can include decisions to release official information, or to refuse requests.

The types of decisions an agency may consider advising a Minister about under a 'no surprises' approach may include, for example, where information to be released is:

- Sensitive or controversial in nature; or
- Likely to be published in the news media or debated in the House.

Agencies and Ministers should decide how and when the Minister is notified of decisions on agency OIA requests. Where it is likely that an OIA response by an agency may result in the Minister being asked to comment, Ministers should be given a short period of advance notice to enable the Minister to be properly briefed so they are able to respond appropriately to enquiries and legitimate scrutiny.

Record-keeping

Agencies should keep full and accurate records of any interactions with the Minister in relation to OIA requests. A record of key points and decisions should be made of any advice given orally, in keeping with the Public Records Act 2005 that states every public office "must create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice" (section 17(1)).