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OIA compliance and practice in

Manatū Hauora
Ministry of Health

Te Kaitiaki Mana Tangata Aotearoa
The Ombudsman New Zealand

September 2022

A report on the Chief Ombudsman's follow up investigation into the practices adopted by Manatū Hauora Ministry of Health for the purpose of compliance with the Official Information Act 1982.

Te Kaitiaki Mana Tangata Aotearoa

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Opinion of the Chief Ombudsman   May 2022

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Background

In 2015 my predecessor, Dame Beverley Wakem, carried out an investigation to:

- examine the attitudes, policies, practices and procedures adopted by government agencies generally, in order to establish how well they were complying with the requirements of the OIA;

- identify good practices, areas of weakness or vulnerability and practices that could give rise to non-compliance; and

- recommend improvements where needed.

As it was not practicable to examine in detail the practices of all government agencies subject to the Ombudsman's jurisdiction, twelve government agencies were selected to investigate as being representative of central government agencies.[1] All 12 agencies were provided with individual reports and although these reports were not published, the agencies were provided with action points which, if implemented, would lead to improvements in OIA practice. A further 75 agencies and 27 Ministers' offices subject to the OIA were invited to provide information via a survey.

The resulting report titled *Not a Game of Hide and Seek, was* published in December 2015.

In December 2019, I decided that it was timely to revisit the 12 representative agencies involved in *Not a Game of Hide and Seek*, by initiating a follow up investigation to determine the current state of OIA practice and culture in these central government agencies.

Introduction

This report sets out my opinion on how well the Ministry of Health Manatū Hauora (the Ministry) is meeting its obligations under the Official Information Act 1982 (OIA).

My investigation has included consideration of the Ministry of Health's supporting administrative structures, leadership and culture, processes and practices, including information management, public participation, and proactive release of information to the extent that these relate to achieving the purposes of the OIA.

The purposes of the OIA are to increase the availability of information to the people of New Zealand in order to:

- enable effective participation in the making and administration of laws and policies; and

- promote the accountability of Ministers of the Crown and officials,

thereby enhancing respect for the law and promoting the good government of New Zealand.

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[1] Accident Compensation Corporation, Department of Corrections, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Justice, New Zealand Customs Service, New Zealand Defence Force, Waka Kotahi NZ Transport Agency, Ministry of Social Development, Ministry of Transport, Public Service Commission.

The OIA also protects official information to the extent consistent with the public interest and the need to protect personal privacy.

As Chief Ombudsman, I am committed to ensuring official information is increasingly available and not unlawfully refused and to improving public sector capability in terms of decision making. Key to achieving this is Parliament's expectation that I regularly review the OIA practices and capabilities of public sector agencies.

I have initiated this practice investigation using my power under the Ombudsmen Act 1975 (OA). This provides me with the tools needed to investigate matters I consider important to improve administrative decision making across the public sector.[2]

I have considered the information gathered through my investigation against an assessment framework consisting of the following five areas:

- Leadership and culture;

- Organisation structure, staffing and capability;

- Internal policies, procedures and resources;

- Current practices; and

- Performance monitoring and learning.

The impact of COVID-19

My investigation coincided with an unprecedented event, the emergence of COVID-19 and the resulting nationwide state of emergency. From 26 March to 13 May 2020, New Zealand was at Alert Levels 4 and 3, during which time individuals who were not deemed essential workers were instructed to work from home under a nationwide lockdown (*the 2020 lockdown*).[3]

The 2020 lockdown enacted in response to the Covid-19 pandemic has caused people across New Zealand, including in the public sector, to adapt to working differently – away from their office; remote from colleagues; and accessing work information from their homes.

I have an opportunity and a responsibility to investigate how agencies' existing official information practices have enabled them to adapt to the challenges presented by the 2020 lockdown, and to maintain compliance with official information obligations. By reporting my findings, my intention is to highlight good practices, identify any vulnerabilities and lift overall official information practices across the public sector by recommending where agencies ought to improve their current arrangements to enable them to maintain resilience and compliance should a pandemic or natural disaster occur at some point in the future.

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[2] See sections 13(1) and 13(3) Ombudsmen Act 1975

[3] Link to the History of the COVID-19 Alert System.

Note that a second nationwide lockdown was initiated in August 2021. Agencies' practices during this period are not part of this investigation.

A key aspect of my information gathering involved seeking information from the agency via a questionnaire, and seeking information from staff via an online survey. Because I extended my investigation to include consideration of agencies' practices during the 2020 lockdown, I asked agencies to complete another questionnaire, and staff; another survey, following the lockdown. For clarity, I have outlined below how I will refer to these throughout my report:

- A questionnaire sent to agencies in late 2019 seeking information about its policies, procedures and practices (I will refer to this throughout my report as 'my initial questionnaire');

- A questionnaire sent to agencies in mid-2020 seeking information about its policies, procedures and practices *during the 2020 lockdown* (I will refer to this throughout my report as 'my post-lockdown questionnaire');

- A survey of staff in late-2019 seeking their views about the agencies culture, policies, practices and procedures; (I will refer to this throughout my report as 'my initial survey'

- A survey of staff in late-2020 seeking their views about the agencies culture, policies, practices and procedures *during the 2020 lockdown*; (I will refer to this throughout my report as 'my post-lockdown survey')

My opinion

Through the investigation process, I have identified areas of good practice, and areas of vulnerability that I think the Ministry should address. My opinion relates only to the Ministry's practice during the period in which my investigation took place.[4] I notified the Ministry of my investigation on 22 November 2019 and I formed my final opinion on 25 May 2022.

I am impressed by the excellent work the Ministry has done in recent years, transitioning to a centralised model of OIA handling. This has resulted in clear improvement in reported OIA timeliness performance. There is also evidence of some good messaging to staff from senior leaders about the importance of the OIA, which is crucial to build a culture that is open to the release of information.

I must also acknowledge the tremendous efforts made by the Ministry and its staff during the pandemic. The Ministry went to great effort to comply with the requirement to proactively release information about the government's pandemic response, and it had to cope with increased demand for information from the media and public during a pressure-filled time. All the Ministry's staff should take great credit for their on-going efforts throughout the pandemic.

I have made two recommendations and suggested 35 actions that I consider will improve the Ministry's practices. The Ministry was given the opportunity to comment on my provisional opinion before I formed my final opinion and I have taken its comments into consideration.

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[4] On occasion I may look at material from outside the investigation period where particular issues warrant further investigation.

One of my recommendations relates to practices of the Ministry's Communications team. My opinion is that the Ministry appears to have acted contrary to law in relation to:

- sections 19(a) and 19(b) of the OIA, by failing to advise requesters—
  - of the reason for the refusal; and
  - about their right to complain to the Ombudsman when requests are refused by the Communications team; and

I recommend that the Ministry amend its Communications team's practices to ensure all OIA responses, which contain full or partial refusal, are dealt with in accordance with the provisions of the OIA.

My second recommendation relates to the Ministry's Information Management (IM) systems and record keeping practices. In a separate investigation into the Ministry's collection, use, and reporting of information about the deaths of people with intellectual disabilities, I found that for the period under review, the Ministry's record keeping systems and practice were unreasonable. My report was published in July 2020. The responses I received from the Ministry's staff during my current investigation into official information practices indicate that my earlier findings may be a microcosm of an agency-wide problem, not just an isolated area of concern within a single directorate of the Ministry: In my initial survey of staff, two thirds of respondents considered it was 'very' or 'somewhat difficult' to use the IM systems to search for and to find information. Indeed, my finding below regarding the Communications team's record keeping reinforces my view about the Ministry's wider IM system and record keeping practices.

It is my opinion that the Ministry appears to have acted contrary to law in relation to its obligation under section 17(2) of the Public Records Act to ensure that information is stored in an accessible form, so as to be able to be used for subsequent reference. Effective IM systems and record keeping practices are vital enablers for compliance with the OIA.

I recommend that the Ministry implement improvements to its IM systems to ensure that information is in an accessible form so as to be able to be used for subsequent reference to ensure compliance with section 17(2) of the Public Records Act.

Although I have made a finding against the Ministry in respect of its Communications team's record keeping practices, I have not made a recommendation in this instance because the Ministry, in its response to my provisional opinion, confirmed its intention to enhance the record keeping practices of its Communications team. I have instead suggested as an action point that the Ministry amend the Communications team's record keeping practices to ensure full and accurate records of substantive correspondence with requesters (including telephone conversations, meetings and oral discussions), and any material internal discussions, are created and maintained in an accessible form.

The Ministry commented on these recommendations as I proposed them in my provisional opinion, and I have addressed the Ministry's comments in the body of this report.

The Ministry has accepted all my action points with the exception of one which relates to publishing OIA responses in Word format in addition to PDF; I have addressed its comments on this action point in the body of this report.

It is encouraging to see that the Ministry has already begun to implement a number of my action points, despite still being in a pandemic response phase, which is undoubtedly challenging.

I would like to extend my thanks to the Ministry for the positive and open way it engaged with this investigation, including during the lockdown period. In particular, my thanks go to those staff who took the time to meet with my investigators to discuss their OIA experiences; staff who completed employee surveys; and liaised with my Office throughout the investigation. I also acknowledge members of the public, including journalists and regular requesters, for the views they shared in my public survey.

I look forward to further productive engagement with the Ministry in the coming months as it works through my recommendations and suggested action points.

Peter Boshier
Chief Ombudsman
May 2022

Executive summary

This summary draws together the key findings and suggested actions from my investigation.

Leadership and culture

The Ministry has shown that there is regular messaging to staff about the importance of the OIA. The development of its centralised OIA team was regularly promoted to staff on its intranet, and the Ministry hosted an 'OIA Day' in 2018 to which I was invited as a keynote speaker. These are excellent initiatives that have resulted in an overall positive perception among staff of the agency's approach to openness. However, there are indications of an inconsistent approach to openness among some senior leaders. The CE is ultimately responsible for the culture of the agency around access to information and therefore must ensure his leadership team have an unambiguous understanding of his approach to openness which they, in turn, cascade to staff.

The Ministry's OIA webpage provides reasonably comprehensive information to requesters and is prominently placed, which is a signal of the importance the agency places on this function. I have identified some improvements that could be made to further enhance the webpage, such as providing more information about internal decision making rules, and it is very encouraging that the Ministry has made further improvements to its site following my provisional opinion, including publishing its OIA policy. I note that the Ministry's OIA webpage contains a message about Covid impacting timeframes for providing official information, which may indicate an ongoing issue with OIA handling capacity which should be addressed.

The Ministry's strategic intentions declare a commitment to transparency, but they do not detail how it intends to achieve this, nor how it intends to ensure compliance with the OIA. The Ministry should develop a strategic framework which promotes an official information culture open to the release of information. This should feature in corporate documents and key aspects of its practice—such as its OIA handling process and its practice of proactively releasing a wide range of information—should be acknowledged and included as contributors to the transparency of its operations.

Action points: Leadership and culture
1. Ensure on-going, positive messaging from the CE to senior leaders and staff to develop consistent attitudes, expectations and culture around access to information.
2. Review and update the Ministry's website incorporating my suggestions.
3. Establish an official information strategic framework which promotes an official information culture open to the release of information.
4. Ensure the official information strategic framework is reflected in strategic documents.

Organisation structure, staffing and capability

In 2018, the Ministry established a centralised OIA Services team which handles the majority of its OIA requests. This appears to have been a key factor in the Ministry's commendable improvement in reported OIA timeliness performance over the last several years. Unfortunately, there was a noticeable drop in OIA timeliness performance in the July to December 2020 reporting period. This is largely attributable to an increase in the volume of requests received. I am aware the Ministry is fielding a large number of information requests relating to COVID-19 and vaccinations and there is every reason to think this will continue for the foreseeable future. The Ministry has substantially increased resource in this area, and should continue its efforts to ensure its OIA handling function is sufficiently resourced so it can maintain the high standard it has maintained over several years in its reported OIA timeliness.

Survey comments from staff also indicate that the OIA Services team is vulnerable to spikes in the number of OIA requests received, or in the event of staff attrition. The Ministry should continue its efforts to establish resilience arrangements for when these occur.

The Ministry should establish mechanisms to improve and ensure resilience within the OIA handling process. Expanding the OIA training available to staff may assist with increasing organisational resilience. For example, business units could have OIA 'champions' who can act as a knowledge resource for business units, and could be called on to write OIA responses when the OIA Services team is stretched.

At present, the Ministry does not have an extensive suite of OIA training for staff. It has a training manual for staff in the OIA Services team, and it has developed an optional, online training module for all staff. I consider the Ministry would benefit from expanding the range of training available. It should be mindful that, although it has a centralised OIA team, all staff need OIA training to an appropriate level. Decision makers and the Communications and Data Services teams require specialised training for their roles; staff in business units should be knowledgeable enough to participate in discussions about withholding information and competing public interests; and all staff should be aware of the constitutional importance of the OIA, how to recognise a request, and the part they play in respect of sound record keeping. Following my provisional opinion, the Ministry has advised that it will provide targeted training for the Communications and Engagement Team, subject matter experts, and decision makers.

Training on record keeping and the Ministry's information management systems is a vulnerability for the Ministry. Staff indicated that IM systems are difficult to use to search for and retrieve information, and the difficulties are likely compounded due to a lack of IM and record keeping training for staff. Ensuring staff are well-trained in this area may mitigate the risk that information requested under the OIA may not be found. In its response to my provisional opinion, the Ministry indicated that it had a dedicated trainer for record keeping, and that training was available for all staff. I look forward to following its progress on delivering training over the coming months.

Action points: Organisation structure, staffing and capability
5. Ensure adequate resourcing in the OIA Services team to meet OIA obligations, based on current and forecast volumes of requests received.
6. Establish and formalise mechanisms to improve and ensure resilience within the Ministry's OIA handling process.
7. Ensure OIA training is available for: • all staff at induction; • subject matter experts who liaise with Ministerial Services on OIA responses; • the Communications and Data Services teams who deal with straightforward requests which are nonetheless subject to the OIA; and • decision makers on OIA responses.
8. Ensure regular OIA refresher training is available for all staff.
9. Deliver training for staff on information management policies and systems.

Internal policies, procedures and resources

The results of my initial survey of staff, as well as the findings from a contemporaneous investigation of the Ministry's collection, use, and reporting of information about the deaths of people with intellectual disabilities,[5] leave me concerned about the utility of the IM systems to search for and retrieve information.

In its response to my provisional opinion the Ministry advised that it does not agree with my conclusion that it has acted contrary to the law in relation to storing information in an accessible form, noting that its primary document management system allows for documents to be exported, in line with the requirements of the Public Records Act 2005 (PRA); and that a 2014 review by Archives New Zealand did not identify the concerns I raised.

I am not persuaded to depart from my opinion that the Ministry appears to have acted contrary to law in relation to its obligation under section 17(2) of the Public Records Act to ensure that information is stored in an accessible form, so as to be able to be used for subsequent reference. In the OIA context, poor record keeping creates a risk that staff will not be able to identify, access and collate information relevant to a request in a timely way. I sought comments from Archives New Zealand on this matter before forming my final opinion.

The Ministry has developed general OIA guidance for all staff which is available on its intranet, and more in-depth guidance resources for staff in the OIA Services team. Results from my

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5 Link to Off the Record: An investigation into the Ministry of Health's collection, use, and reporting of information about the deaths of people with intellectual disabilities.

initial staff survey indicate that staff find these resources easy to find and to use, which is positive. The guidance could be improved by adding detail on some aspects of the OIA and the Ministry's practice where there are currently some gaps. For example, I note a lack of guidance on public interest considerations where the Ministry is considering withholding information under section 9(2) of the OIA. Following my provisional opinion, the Ministry has advised that my suggested amendments are underway.

I'm pleased that the Ministry has a proactive release policy underpinning its generally sound practice. The policy should be strengthened by ensuring the public interest considerations in the policy align with the principle and purposes of the OIA, and by including a commitment to publish information in the most usable form. Developing this policy further, then ensuring it is promoted among senior leaders may help to ensure a consistent approach across all the directorates to proactively releasing information. Following my provisional opinion, the Ministry has advised that my suggested amendments are underway.

The Ministry also has a policy to guide its practice on fixing a charge for the supply of official information. This policy could also be strengthened by adding details about public interest considerations, along with other factors that may favour remission of charges, and the tasks that can and cannot be charged for.

In the interest of transparency, I suggest that the Ministry publish both its charging and proactive release policies once they are finalised. These policies should also include document control elements to help ensure that it is clear who has executive responsibility for adherence with the policies, and that timely reviews and updates occur.

Recommendation
Implement improvements to IM systems to ensure that information is in an accessible form so as to be able to be used for subsequent reference in line with section 17(2) of the Public Records Act.

Action points: Internal policies, procedures and resources
10. Review and amend charging policy in accordance with my suggestions to provide details of: - the considerations around how and whether to charge for the supply of information;   - remission of charges; and   - tasks that may and may not be charged for.
11. Ensure appropriate document control measures exist, along with clear executive responsibility for the charging policy, to ensure regular reviews and updates occur.
12. Once finalised, publish the charging policy.

Action points: Internal policies, procedures and resources
13. Review and amend OIA guidance incorporating my suggestions to include information about: • how to consider requests for urgency;   • how to consider and apply the withholding provisions in section 6, 9 and 18 of the OIA (although agencies can use guidance produced by my office as a reference when considering the application of withholding grounds, it is good practice to collate their own materials to assist staff which include more specific examples based on the types of requests they receive frequently);   • the agency's duty under section 13 of the OIA to give reasonable assistance to requesters;   • how to apply the public interest test, and where this is applicable; and   • alternative methods of allowing access to information.
14. Refine the proactive release policy incorporating my suggestions to: • ensure public interest considerations for releasing information are detailed and align with the principle and purposes of the OIA;   • include document control elements such as review dates and the role which holds executive responsibility for administering the policy; and   • include a commitment to releasing information in the most useable form (in accordance with the New Zealand Government Open Access and Licensing framework).
15. Once finalised, promote the proactive release policy among senior leaders and staff.
16. Once finalised, publish the proactive release policy.
17. Ensure a senior manager is assigned strategic responsibility and executive accountability for administering the proactive release policy

Current practices

I commend the Ministry for publishing a large amount of information proactively, including data sets, OIA responses and variety of health topics. In particular, I applaud the efforts of the Ministry and its staff for its preparation of extensive information for proactive release on the government website, *Unite against COVID-19,* during the 2020 lockdown. The impact of releasing this information on New Zealanders' trust and confidence in government at a time it was wielding extraordinary powers, cannot be over-emphasised.

The Ministry's IM system appeared unfit for preparing this information while working from home, shown by some staff needing to be declared 'essential workers' in order to do this work at the Ministry's offices. The Ministry should review the utility of its IM systems for staff working from home to ensure they are fit-for-purpose.

The OIA Services team handles the majority of OIA requests received by the Ministry. The Communications team typically responds to straightforward information requests from the

media; and the Data Services team handles straightforward requests for data-sets. Either team may refer requests to OIA Services where it is considered that greater technical knowledge of the OIA may be required, for example, when it is anticipated that withholding grounds may apply.

The sample files my investigators saw from the OIA Services team showed some good practices. The Ministry typically acknowledges OIA requests swiftly and in writing, and it frequently includes contextual information to help the requester to understand the information it has provided. The OIA Services team has greatly improved the Ministry's reported OIA timeliness statistics over recent years, though the Ministry should ensure that statistics related to the Communications and Data Services team's handling of OIA requests are also included in the statistics reported to Te Kawa Mataaho Public Service Commission.

The sample files from OIA Services appeared to have good record keeping of email interactions, both internally and externally, but little record of the rationale behind decision making, nor of administrative steps taken to search for information. If any meetings or substantive discussion took place in relation to the particular files inspected, no file notes of these were provided. Following my provisional opinion, the Ministry has advised that improvements to its documentation of OIA decision making and administrative steps are underway.

The Ministry's OIA guidance describes a multi-part process for signing out OIA responses which staff described as '*extensive*'. Key staff at the Ministry have indicated that the pressures of the 2020 lockdown resulted in changes to this process evolving by necessity, for example moving to a wholly electronic sign-out process, and managers at lower tiers signing out responses. These practices have persisted beyond the 2020 lockdown, but are unchanged in the Ministry's guidance and training documents. There is merit in reviewing current practices to ensure decision makers have appropriate authority from the CE to sign out OIA responses, and that the leadership level required to sign out a given response is appropriate to the nature of the request. The Ministry should update guidance and training documents to ensure they reflect the updated practice.

I am concerned about the Communications team's handling of media information requests and its record keeping practices. Where requests from the media are for information held by the Ministry, as distinct from requests for interviews or to generate comments, these are OIA requests and must be handled in accordance with its provisions. I requested samples of the Communications team's information request files, just as I did sample files from the OIA Services team. The sample files showed that Communications Team did not always comply with sections 19(a) and 19(b) of the OIA. There were a number of examples of the Ministry failing to provide requested information without providing the reason under the OIA for withholding the information. I also saw numerous examples of the Ministry failing to inform requesters of their right to complain to me when information was withheld.

Accordingly, it is my opinion that the Ministry appears to have acted contrary to law by not meeting its legal obligation under sections 19(a) and 19(b) of the OIA, which states that any refusal or withholding of information must provide a reason for the refusal or withholding, as well as advise the requester that they can make a complaint to me to seek an investigation and

review of the decision. Of the specified sample files I requested, there was one file for which no associated information could be provided by the Ministry, even with its IT team engaged to conduct a search. It is my opinion that the Ministry appears to have acted contrary to law in relation to sections 17(1) and 17(2) of the Public Records Act 2005, which respectively, require the Ministry to:[6]

- create and maintain a full and accurate record its affairs; and

- maintain records in an accessible form to enable use for subsequent reference.

Although, in its response to my provisional opinion, the Ministry advised that it was '*comfortable*' with the Communications and Engagement Team's practices, it provided no further evidence in respect of it practices in relation to record keeping on media information requests, nor its practices in relation to compliance with section 19 of the OIA, which would persuade me to depart from my opinion. The Ministry indicated that it would review the Communications and Engagement Team's practices '*when the Ministry has moved out of its current pandemic response phase*'. It also confirmed its intent to transition to using Sharepoint for document management relating to communications. Because of its signalled commitment to improve the record keeping practices of its Communications team, I will not make a recommendation in this instance. I intend to follow up on the Ministry's progress on implementing improved record keeping systems and practices in the year following my investigation.

I anticipate that implementing the necessary changes in this area will require a cultural shift in the Communications team which should be supported by senior leaders.

Some aspects of the Ministry's approach to interacting with Ministers' offices on departmental OIA requests are outlined in its published OIA policy. The policy does not detail the required timeframes around these interactions, although its OIA Guidance notes that proposed responses must be provided to the Minister's office five days in advance of its due date to the requester, based on the maximum statutory time limit of 20 days. No distinction is made between the timeframe for providing responses for notification, versus consultation. This practice concerns me as it leaves the Ministry at risk of being routinely in breach of its obligation to make and communicate a decision on each request '*as soon as reasonably practicable*'. It is therefore pleasing to note that, in practice, the Ministry has begun to move away from the five day notice period. It would be timely for the Ministry to review its practices and ensure its OIA guidance and policy documents reflect the resulting changes. I have suggested a number of other factors that written guidance on Ministerial interactions should include.

The Ministry has taken steps to ensure that OIA responses published on its website are accessible for all users. The OIA Services team currently uses software that facilitates accessibility, and the Ministry's policy when producing information for proactive release is to use digital copies rather than scanning image-only documents. The Ministry notes some older published responses may not comply with this. As well as being searchable, visual elements in

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[6] Link to s17 of the Public Records Act 2005.

PDFs should be tagged with alternative text and published PDF documents should, ideally, be accompanied by an accessible Microsoft Word version. In its response to my provisional opinion the Ministry explained that it did not publish Microsoft Word versions of published OIA responses but it could provide responses in different formats on request. While acceptable, I note that accessibility standards, and my comments, apply to all proactively released material not only OIA responses.

Recommendation

Amend the Communications team's practices to ensure all responses to information requests, which contain full or partial refusal, are dealt with in accordance with the provisions of the OIA.

Action points: Current practices

18. Amend the Communications team's record keeping practices to ensure full and accurate records of substantive correspondence with requesters (including telephone conversations, meetings and verbal discussions), and any material internal discussions, are created and maintained in an accessible form.

19. Record reasons for OIA decisions, including consideration of the public interest where applicable, for example in the cover sheet or in a file note.

20. Record administrative steps behind OIA responses including, where appropriate:
- the steps taken to search for information; and
- the time taken to collate a sample of documents within the scope of a request for a large amount of information.

21. Ensure full and accurate records of substantive telephone, face-to-face and other discussions in relation to the OIA handling process are created and maintained.

22. Review and update practices and guidance in respect of the OIA sign-out process, ensuring that:
- the Ministry employs a practice that allows it to comply with its obligation under the OIA to make and communicate decisions on OIA requests as soon as reasonably practicable;
- guidance and process documents make it clear which leadership tiers are authorised to sign out different categories of information request;
- the OIA Team's actual practice is accurately reflected in guidance and process documents; and
- roles which are able to sign out OIA responses have the appropriate, written authority from the CE in line with section 15(4) of the OIA.

23. Ensure written policies, process and guidance documents are updated to reflect any changes in the Ministry's sign-out process.

Action points: Current practices
24. Ensure messaging from senior leaders reinforces that requests for information handled by the Communications team must adhere to the OIA.
25. Review the utility of IM systems in remote working situations to ensure they are fit for purpose.
26. Ensure any guidance or policy developed from a business continuity perspective relating to OIA handling makes it clear that OIA requests must be handled on a case-by-case basis.
27. Review practices around interactions with Ministers' offices on OIA responses to ensure practices align with the 'no surprises' principle and are not a proxy approval process.
28. Develop written policy/guidance on interactions with Ministers' offices, which should include: • how the agency distinguishes between consulting with the Minister's office on a request, and advising the Minister of a request as an '*FYI*' only;   • whether all responses deemed 'of interest' are provided in full to the Minister's office, or whether some are notified by subject or a summary only;   • what factors would cause the agency to consider a request to be 'of interest' to the Minister;   • the process in the event the Minister's office wishes to raise concerns with the agency;   • the timeline for providing responses or response summaries to the Minister's office; and   • the process when the Minister's office is unable to respond to a consultation within the statutory timeframe to respond to the requester.
29. Ensure the text of all PDF documents published and/or released in response to OIA requests are searchable and not 'image only'; ensure visual elements are tagged with alternative text.
30. Where possible, publish accessible Microsoft Word versions of proactively released material in addition to PDF versions.

Performance monitoring and learning

The Ministry's data collection and reporting appears focussed on compliance with statutory timeframes. Timeliness is important, and it is likely that this focus that has contributed to the Ministry's impressive reported improvements in timeliness over the last several years. The Ministry should now expand its focus to include collecting and analysing qualitative data and reporting this to senior leaders. This type of data provides a wealth of information that can inform resourcing and training decisions, as well as identifying areas where process efficiencies can be gained, and to ensure that tools within the OIA such as extensions are used appropriately.

OIA handing statistics from the Data Service and Communications teams should be included in the Ministry's biannual report to Te Kawa Mataaho Public Service Commission, which publishes

statistics for Crown entities and government departments subject to the OIA. This will communicate a truer picture of the volume of requests received, and the work the Ministry is doing to respond to them.

The Ministry has advised me that it reviews results of my investigations and passes this information to relevant teams. I am pleased this forms part of the Ministry's practices. It may benefit from establishing a formalised method for regularly monitoring information such as guidance and case notes produced by my Office, and other sources such as Te Kawa Mataaho Public Service Commission. This should also include a process for sharing relevant information with staff and updating OIA guidance, policy and procedures as appropriate.

The Ministry has a robust peer review practice in place for OIA requests handled by the OIA Services team. It may further benefit from incorporating a quality assurance process into its practice. Distinct from peer review, a quality assurance review of selected closed files allows a view of the effectiveness of the OIA handling process from start to finish. This information can feed into decisions about practice, resourcing and training needs.

Action points: Performance monitoring and learning
31. Formalise the process for learning from Ombudsman investigations and guidance, and reflect the learnings from these into OIA policy, guidance and procedures.
32. Collect and analyse further qualitative data on the handling of OIA requests.
33. Improve details in regular reporting of statistics to senior leadership.
34. Include official information requests handled by the Communications team in OIA statistical reporting.
35. Develop a quality assurance process for completed OIA requests.

Leadership and culture

Achieving the purposes of the OIA depends significantly on the culture of the agency and the attitudes and actions of its leaders. Ministers, chief executives and senior managers should take the lead in developing an environment that promotes openness and transparency, champions positive engagement with those who want to know and understand what work they are doing, and enables compliance with the principle, purposes and provisions of the OIA.

When it is clear to staff that their leaders respond to requests for official information positively and view it as an opportunity to operate in a more transparent, engaging and accountable manner, they will follow.

To assess the Ministry's leadership and culture, I considered whether:

- the chief executive, senior leaders and managers demonstrated a commitment to the Ministry meeting its obligations under the OIA and actively fostered a culture of openness;

- senior leadership had established an effective official information strategic framework which promoted an official information culture open to the release of information; and

- senior leadership demonstrated a commitment to proactive disclosure and public participation, with clear links to the Ministry's strategic plans, creating a public perception of openness.

Messaging to staff

Visible support from senior leaders is key in developing a culture of openness and transparency. This is an on-going process, driven by the words and actions of leaders on a continual basis. In its response to my agency questionnaire, the Ministry was able to cite a number of examples of clear messaging to staff about the importance of the OIA and openness, spanning 2018 – 2020. These included:

- excerpts of messaging on its intranet about the OIA, and about the Ministry's maturing practice of proactively releasing information;

- instances of the Chief Executive's (CE) weekly emails to staff mentioning the OIA and promoting the formation of the newly centralised OIA team; and

- an 'OIA Day' organised by the Ministry, to which I was invited as keynote speaker.

Through my initial online survey, I asked the Ministry's staff about their perceptions of leaders' approach to the OIA, and to openness more broadly.[7] Their answers are shown in the tables below:

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[7] 184 Ministry staff responded to my initial survey, and 161 staff responded to my post-lockdown survey. The Ministry has approximately 1250 staff according to its 2020 Annual Report.

How would you rate the signals sent by the following people *about the OIA*, as it relates to your agency?

Leadership level	Strongly or moderately pro-disclosure	'They are silent on the issue' or 'I don't know'	Strongly or moderately anti-disclosure
Chief Executive	65%	34%	1%
Deputy Secretary	65%	29%	6%
Immediate Manager	72%	22%	6%

How would you rate the signals sent by the following people *about openness and public engagement more broadly*, as it relates to your agency?

Leadership level	Strongly or moderately pro-openness	'They are silent on the issue' or 'I don't know'	Strongly or moderately anti-openness
Chief Executive	79%	19%	3%
Deputy Secretary	73%	19%	8%
Immediate Manager	78%	15%	7%

I note that the percentage of the Ministry's staff who responded to my initial survey and said that leaders are strongly or moderately pro-openness, and strongly or moderately pro-disclosure, is higher than the average across all 12 agencies under investigation. The average ratings from staff across all twelve agencies in my initial survey are:

- 56 percent of respondents across all agencies said the signals sent by their Chief Executive are strongly or moderately pro-disclosure under the OIA.

- 76 percent of respondents across all agencies said the signals sent by their Chief Executive are strongly or moderately pro-openness and public engagement more broadly.

- 58 percent of respondents across all agencies said the signals sent by Deputy Secretaries are strongly or moderately pro-disclosure under the OIA.

- 69 percent of respondents across all agencies said the signals sent by Deputy Secretaries are strongly or moderately pro-openness and public engagement more broadly.

Despite staff's generally positive perceptions of senior leaders' approach to openness, I note that a significant percentage of staff that said they 'didn't know' or that leaders were 'silent on the issue' when asked about the signals sent by leaders around the OIA. This may indicate that

there are pockets of the Ministry in which messaging about the importance of the OIA is not being received.

The CE is ultimately responsible for the organisational culture around access to information. He must ensure all his senior leaders have a clear, consistent and entirely unambiguous understanding of his expectations around openness and transparency. The strong promotion of a proactive release policy will also assist in establishing a consistent understanding and approach among senior leaders. I will discuss this further under *Internal policies, procedures and resources*.

My concern that there may be an inconsistent approach to openness is echoed in some comments from staff in my initial online survey. These indicate that, although the Ministry's culture around openness is maturing, there are pockets within the organisation where the culture '*lags*'.

> *Timeliness of responses to OIA requests has improved enormously. Many responses are now published on the Ministry's website, which is a hugely positive change. There is something of a cultural lag - I still hear comments about not writing things down, etc, but it is decreasing.*

> *I personally don't hear much at all about openness.*

> *Ministry hasn't necessarily been consistent with what is released and what is withheld across the organisation.*

> *Practice differs across the Ministry. Some areas of the Ministry of Health are very good, but others engage with stakeholders in ways that are rushed or ad hoc, and cause some frustration.*

Generally, my surveys indicated that staff generally hold a favourable opinion of the agency's culture of openness. When asked *'What is your impression of your agency's overall commitment to a culture of openness and public participation?'* respondents answered as follows:[8]

	Strongly pro-openness and public participation	Moderately pro-openness and public participation	The agency is silent on the issue or 'I don't' know'	Moderately anti-openness and public participation	Strongly anti-openness and public participation
Initial survey	33%	50%	10%	7%	0%
Post-lockdown survey	54%	32%	10%	3%	1%

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[8]   Note that figures have been rounded to the nearest percent.

I note a significant increase in the percentage of staff who considered the agency was 'strongly' pro-openness and public participation, during the 2020 lockdown. While it can't be proved that the high profile of the Ministry's CE during the 2020 lockdown is the sole reason for staff's improved perception of the agency's openness, the visibility of his role sharing information with the public over that time is likely to be a contributor. If so, this is a powerful demonstration of the impact that consistent, visible demonstrations of openness by senior leaders can have on staff.

The Ministry has shown good examples of its messaging to staff about the importance of the OIA and openness, not just once but consistently over several years. In its response to my provisional opinion the Ministry advised that the CE sends a weekly email to Ministry staff *'which may, from time to time, include information about OIA purpose and practice'*. The impact of visible messaging is reflected in the overall positive perceptions of staff, shown in my surveys. The Ministry should continue to search for opportunities to reiterate this messaging to fully embed openness into its culture. The CE should also ensure that this messaging is echoed by senior leaders through their words and actions.

Action point
Ensure on-going, positive messaging from the CE to senior leaders and staff to develop consistent attitudes, expectations and culture around access to information.

OIA webpage

The information published on an agency's website is a strong indicator to the public of its approach to openness. The Ministry's OIA page is located just one click from the homepage through a prominent link.[9] I consider this to be a positive signal of the importance placed on this function by the Ministry.

The Ministry's OIA webpage has a commendably wide range of information to assist requesters, including:

- an overarching statement about the constitutional importance of the OIA;

- details about requester eligibility;

- links to frequently requested information that the Ministry releases proactively;

- a link to selected OIA responses that the Ministry releases proactively;

- details of requesters' right to seek a review of the Ministry's decision by way of a complaint to me; and

- comprehensive information about OIA timeliness obligations, which I am pleased to see highlights the requirement of the Ministry to provide information '*as soon as reasonably practicable*'.

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[9] Link to the Ministry of Health's OIA webpage.

The Ministry encourages requests to be made by email, by post, and via an online form. I consider that best practice is to have as wide a variety of submission methods as possible to assist requesters, particularly those who may have a disability or difficulties submitting a written request. It may consider adding a contact phone number to its submission methods for OIA requests.

The Ministry has published its official information policy on its OIA webpage which is a sound demonstration of openness. Requesters have a presumptive right to access documents containing '*policies, principles, rules, or guidelines in accordance with which decisions or recommendations are made*' under section 22 of the OIA.[10] To reflect this right, and to better promote transparency and accountability, I encourage all agencies to proactively publish documents containing this type of information.

There are further benefits to be gained by the Ministry by expanding on its contents of its published official information policy. For example, where agencies have clear and reasonable policies articulating their approach to considering requests for urgency, charging for the supply of information, checking the eligibility of requesters, and dealing with vexatious requests, they will be less vulnerable to criticism when they apply these policies.

In addition to this, the Ministry's website could be further improved by adding:

- an explanation of what official information is;

- internal decision making rules, policies, and guidelines (as detailed in section 22 of the OIA); and

- a description of the information the Ministry holds.

Although I note that the Ministry's website has been updated to include some information about what official information is and the information the Ministry holds, some more specific details may assist requesters. For example, it may be helpful to specify that draft documents, and information '*in officials heads*' can be official information.

When the 2020 lockdown began, the Ministry added wording to its website stating that the increased volume of requests and enquiries may impact response times, but it did not imply it would take a blanket approach of delaying all enquiries, which I consider to be good practice in this situation. I note that at the time of writing this report, this message remains on its website. If on-going impacts on response times are anticipated as a result of the COVID-19 pandemic, this suggests a resourcing issue that should be addressed. I will discuss this further under *Organisation structure, staffing and capability.*

Action point
Review and update the Ministry's website incorporating my suggestions to include: • an explanation of what official information is;

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[10] Link to s22 of the OIA.

Action point
• internal decision making rules, policies, and guidelines (as detailed in section 22 of the OIA); and • a description of the information the Ministry holds.

Developing a strategic framework for openness and OIA compliance

Achieving OIA compliance and a culture of transparency and continuous improvement do not happen by accident. Agencies should have a strategic framework describing how they intend to achieve OIA compliance, maintain good OIA practice and promote an official information culture that is open to the release of information. This strategy should include having senior leader(s) assigned specific responsibility and executive accountability for official information practices including the proactive release of information.

The Ministry's corporate documents indicate an intention to achieve greater transparency. For example, its Strategic Intentions 2017 to 2021 document[11] speaks of the Ministry's values and behaviours, which include *'instil(ling) trust and confidence'* and being *'open and transparent'*. Its keystone strategy document *New Zealand Health Strategy, Future Direction* published in 2016,[12] states:

> *We want to build a culture of transparency and openness, using high-quality outcome indicators, to build the public's trust and confidence.*

The companion document to the Health Strategy is the *Roadmap of Actions*[13] which is intended to describe how the Ministry will achieve its strategies, but it does not explain how it will build a culture of transparency and openness, for example, the *'high quality outcome indicators'* are not described.

I consider the Ministry could benefit from recognising the value of its existing OIA practices not just as a compliance activity, but as a method and a tool for instilling public trust and confidence, and transparency. In turn, the Ministry's strategy for achieving compliance with the OIA and a culture of openness and continuous improvement should be reflected in its published strategic documents.

It is important for agencies to publicly express their commitment to openness and transparency to increase public awareness of the OIA as a constitutional measure, and enable the public to have trust and confidence in how requests for information will be treated. The Ministry is in a unique position, in terms of its visibility to the public, at the time of writing this report. Its CE has become a well-known public figure due to his appearance in press conferences throughout and following the 2020 lockdown. I consider the Ministry has an opportunity to leverage its current profile to build on a public perception of openness and

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[11] Link to Statement of Strategic Intentions 2017-2021.

[12] Link to New Zealand Health Strategy, Future Direction.

[13] Link to Roadmap of Actions.

transparency. I would note, also, that its high profile may also lead to high expectations. It is important the Ministry exhibits a strong commitment to transparency, particularly during a period in which its high visibility inevitably results in a high level of scrutiny.

Action points
Establish an official information strategic framework, which promotes an official information culture open to the release of information.
Ensure the official information strategic framework is reflected in strategic documents.

Organisation structure, staffing, and capability

Responding to official information requests is not only a legal requirement but a core function of the public sector. Therefore, it is expected agencies will organise their structure and resources to ensure they are able to meet their legal obligations under the OIA, in a way that is relevant to their particular size, responsibilities and the amount of interest in the information they hold.

To assess the Ministry's organisational structure, staffing and capability, I considered whether:

- the Ministry had the capacity to discharge its official information obligations, with clear and fully functioning roles, accountabilities, reporting lines, delegations and resilience arrangements; and

- the Ministry had the capability to discharge its official information obligations.

OIA handling model and capacity

The Ministry currently operates a centralised model of OIA handling, having transitioned in 2018 from a decentralised model. In its response to my initial questionnaire, the Ministry had this to say of the change:

> *The Ministry has overhauled its approach to responding to OIA requests. We moved away from a de-centralised process and designed a centralised system, whereby all OIAs are managed from the Office of the Director General directorate, with the necessary subject matter expertise provided from across the Ministry. We ran a process design and engagement programme across the Ministry with dozens of different people across all the Ministry's directorates. The results have been very successful, with an overall 32% improvement to compliance rates since 2017.*

As the Ministry points out, the transition to a centralised model correlates with a significant improvement in the Ministry's reported OIA timeliness statistics. Although the improvement in timeliness statistics validates the Ministry's decision to operate a centralised OIA processing model, this change in isolation is unlikely to be the sole factor for its improvements. Dedicated staff, increased resourcing, and a commitment from senior leaders to drive improvements in OIA performance have surely contributed to the successful transition to a centralised model of OIA handling. Senior leaders' investment in the OIA Services team was evident in their regular promotion of the team via messaging on the intranet—discussed earlier under *Leadership and culture*.

The OIA Services team sits within the Office of the Director General, who is also CE of the Ministry. Its placement within this directorate highlights the importance of the official information processing function, and should allow the CE greater oversight and visibility of that aspect of the Ministry's operations.

Overall, comments from staff in my initial survey indicate the change to a centralised model for OIA handling has been welcomed, and is seen as resulting in improvements to the Ministry's OIA performance:

> *I am of the view that since the OIA team has been set up within the MOH, there has been a significant improvement with the commitment of meeting OIA legislative requirements.*

> *Fewer holdups by line managers, with higher priority and self-discipline apparent, since the creation of specialist OIA section.*

> *Having a dedicated team responsible for responding to OIAs has been successful in lifting those parts of the organisation that were not performing well in meeting the OIA timeframes.*

> *The new OIA team has helped lead managers to take more responsibility for their timeliness. They are also great at supporting managers.*

> *Centralising the administration and collation of OIA requests has been a major improvement.*

Although the majority of comments were positive about the impacts of the new OIA handling process, there were some outliers:

> *The 'new'/current Ministry process adds incredibly to the time and workload of those preparing OIA responses, and increasing the associated bureaucracy.*

> *The associated bureaucracy has increased significantly in the new process.*

> *…(A) lot of road blocks when going through sign out.*

These comments may indicate some inefficiencies in the processes associated with the centralised model which I will discuss further under *Current practices*.

Staff who responded to my initial survey also noted issues with capacity in the OIA Services team at times:

> *The OIA team has been fantastic since it was reintroduced. However I understand that recently (in the last few months) there have been staffing issues and this has led to a drop in responsiveness and quality and a tendency for OIA work to be pushed out to other staff or left floating. It would be great to see the good work from last year maintained.*

> *The OIA team is doing a good job but I think further resources/FTE are needed. They are pressured due to volume.*

I note that the Ministry's reported OIA timeliness dropped to 91.6 percent in the July to December 2020 reporting period. This is the lowest it has been since July to December 2017. The key reason for the significant slip in timeliness was the sheer volume of requests received, and this was exacerbated by the OIA Services team not being resourced to full capacity through much of this time due to staff attrition. The number of requests the Ministry received increased precipitously to 942 in this period, compared to 649 requests received in the same reporting period in 2019; and 662 in the period January to June 2020.

It seems likely that the Ministry's request volumes will remain at a higher level for some time as it is at the forefront of a matter of great public interest. That is, the ongoing COVID-19 pandemic, and related issues such as the government's vaccination strategy. The Ministry must ensure that it has a sufficiently flexible structure in place which is well resourced to respond to the anticipated volume of requests in order to meet the timeliness obligations in the OIA without sacrificing the quality of its responses.

Agencies should have resilience arrangements that are triggered when the volume of requests reach a certain threshold, or when the capacity of the OIA team is reduced because of, for example, staff absences or attrition. Resilience arrangements could include, for example, having OIA 'champions' in various teams who can be called on to compose responses when the OIA Services team is overloaded. (Those people can also act as an OIA knowledge resource for their teams.) When my investigators discussed OIA resilience arrangements with key staff in the Ministry, they responded that when workloads increased, they responded by '*rolling up their sleeves and getting it done'*. I commend this commitment from staff, however, I do not consider that simply being prepared to work harder and longer constitutes a resilience arrangement.

In order to maintain its extremely impressive improvement in reported OIA timeliness adherence, while maintaining a comprehensive programme of proactively releasing information, the Ministry should ensure it is adequately resourced to perform these functions along with its other BAU work. It is positive that the Ministry has '*almost doubled'* its OIA Services team over the past 18 months, and has required resource levels and efficiencies under review, as it advised me in its response to my provisional opinion. I encourage the Ministry to ensure its OIA handling function is sufficiently resourced based on the current and forecast volumes of requests received, and that it has resilience arrangements in place to reduce safeguard against the risk of unexpected increases in the OIA workload.

Action points
Ensure adequate resourcing in the OIA Services team to meet OIA obligations, based on current and forecast volumes of requests received.
Establish and formalise mechanisms to improve and ensure resilience within the Ministry's OIA handling process.

OIA Training

The Ministry has advised me that it provides staff opportunities for OIA training via a number of methods:

- an online learning module which is available to all staff but is not a mandatory requirement to complete;

- a session run fortnightly, available to all staff to enrol themselves in, which introduces the work of the Government Services group, including the OIA function;

- OIA Services provide OIA training to new managers at a monthly managers' induction session.

The Ministry's OIA training module is available through its online education portal, *Learning Space*. The training module highlights key aspects of the OIA, including:

- the key role of the OIA in promoting accountability;

- the requirement to make and communicate a decision '*as soon as reasonably practicable*', as well as the maximum statutory time limit (barring extensions) of 20 working days;

- types of information that are open to request under the OIA, including text messages and written notes;

- types of information which are not classed as official information, eg. evidence of submissions to a commission of inquiry, and victim impact statements;

- offices and entities that are subject to the OIA, eg. Crown entities, District Health Boards and Ministries; and

- offices and entities that are *not* subject to the OIA, eg. the Office of the Ombudsman, Parliament, and Courts.

The module also encourages staff to engage with the Ministry's OIA team if they have any queries. I commend the Ministry for developing interactive and engaging training material for staff. It may benefit from expanding on the content of this module (or delivering this content in another format) which explains to staff that, as public servants, they have a vital role in OIA compliance even when they do not consider themselves directly involved in OIA processing, in being able to recognise when they have received an OIA request and in the way they create, store and maintain official information.

The Ministry has more in-depth training/guidance for staff in the Ministerial Services team, which I will discuss further under *Internal policies, procedures and resources.*

Some staff training is delivered on an ad hoc basis. A survey respondent commented:

> *The manager OIA attended one of our team meetings and provided some excellent ad hoc training for the team.*

I commend the Ministerial Services team for recognising the need for training and taking the initiative to deliver a solution. While it is important to be reactive to requests for training, it would be best practice for training needs to also be assessed on a formalised basis. This will help to ensure that a practice of on-going training is embedded. Where training is only delivered on an ad hoc basis, the practice is vulnerable to slipping during busy times.

The collection and analysis of OIA data including the results of quality assurance can be used to inform decisions on training needs, as I will discuss further under *Performance monitoring and learning*.

Nearly half of staff who responded to my initial survey—43 percent—reported that they had received OIA training within the last one to two years. In spite of the existence of the training opportunities discussed above, a higher percentage—47 percent—said either that they had never received training on the OIA, or it had been more than four years since they had received training.[14] This concerns me. It appears to me that there is little training on technical aspects of the OIA for those outside the OIA Services team. Although the Ministry has moved to a centralised OIA handling model with the bulk of OIA expertise in the Ministerial Services team, there must still be an appropriate level of training for other staff. In particular, the Ministry would benefit from ensuring targeted training for:

- all staff at induction;

- subject matter experts (SME) who liaise with OIA Services on OIA responses;

- the Communications and Data Services teams, who deal with straightforward information requests which are nonetheless subject to the OIA; and

- decision makers on OIA responses.

SMEs should be adequately trained on the OIA in order that they can meaningfully participate in discussions about whether information should be released or withheld, and weighing the public interest in releasing information. Similarly, decision makers—meaning OIA signatories—must have a sound understanding of technical aspects of the OIA. As public servants, all staff should have an awareness of the constitutional importance of the OIA and their role in that process. Even where staff may not be directly involved in OIA handling, they may receive requests, and they will create, store, and maintain records; effective record keeping is a vital enabler for compliance with the OIA.

Staff in the Communications and Data Services teams should also have an adequate level of knowledge about the OIA to allow them to identify OIA requests and to be aware of the obligations they must adhere to when responding to them. In particular, these staff need to be aware of OIA timeliness obligations and, where any aspect of the request is refused, they must be aware of the Ministry's obligations under section 19 of the OIA to give the requester the reason for its refusal and to advise them of their right to make a complaint to me.

Some respondents to my initial survey of staff indicated that a broader range of training would be welcomed:

> *Regular refreshers for managers that sign out OIA would be good.*

> *There is a high level of communication about the importance of the OIA and following it carefully, but a lack of basic training for new staff on how to do this effectively.*

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[14] Respondents who answered that they received training within the last year – 25 percent; between one to two years ago – 18 percent; between three to four years ago – 10 percent; more than four years ago – 18 percent; respondents who answered that they had never received OIA training - 28 percent. (Percentages may not total 100 due to rounding.)

The training used to be in person but is now online (at least if there is any in person I'm not aware of it). I think the training should be offered in person again as it means people can ask questions and also they then know who to ask at a later time/make connections with the OIA and legal teams.

As noted there have been recent improvements in guidance driven by a centralised team. Whereas previously each business unit was left to their own devices. However, I have never encountered any formal training for staff.

We now have a dedicated OIA team which has greatly improved coordination and timeliness of OIA responses. This team could do with continued upskilling to ensure they are able to provide the best advice on OIA requests.

In its response to my provisional opinion, the Ministry stated that it provides regular '*Intro to Government Services and our work*' sessions which are part of the induction for all new Ministry staff. The Ministry also confirmed that it would make 'further improvements' to its OIA training which will '*include targeted sessions for Communications staff, OIA subject matter experts and OIA decision makers'*. It is extremely encouraging that the Ministry intends to make these improvements. If it might assist, I remind the Ministry that my Office can be contacted to assist with training development.

Action points
Ensure OIA training is available for: • all staff at induction;   • subject matter experts who liaise with Ministerial Services on OIA responses;   • the Communications and Data Services teams who deal with straightforward requests which are nonetheless subject to the OIA; and   • decision makers on OIA responses.
Ensure regular OIA refresher training is available for all staff.

IM and record keeping training

It is my expectation that all agencies provide training for staff on information management (IM) systems and record keeping obligations that is role-specific, and includes guidance on information retrieval as well as information storage. The effective use of IM systems for storage and retrieval, and the establishment of consistent, agency-wide practices is important not only in fulfilling OIA obligations, but for efficient business practices generally. In the context of responding to OIA requests, effective IM systems and record keeping practices facilitate OIA compliance by ensuring staff can easily identify, access, and collate information relevant to requests.

It is therefore concerning to note that, of Ministry staff who responded to my initial survey nearly half—47 percent—said either that they had never received training on how to use the

IM systems since working at the Ministry, or it had been more than four years since they had received training. An even higher percentage of respondents—55 percent—said the same of record keeping training (eg. what a record is, how/where/for how long records should be kept).[15]

The Ministry's IM system and record keeping practices are not a strength, as I will discuss further under *Internal policies, procedures and resources*. While it is important for all agencies to provide sufficient training and guidance to staff on IM systems and record keeping practices, it becomes all the more crucial when those systems are, as reported by staff *'cumbersome and not user friendly.'* Comprehensive training may help to mitigate the effects of systems which staff find difficult to use.

Action point
Deliver training for staff on information management policies and systems.

The Ministry's response

In its response to my provisional opinion the Ministry stated:

> *The Ministry is committed to information management training. The Ministry has a dedicated trainer and all new staff (permanent and contractors) are contacted for a training session in information management procedures and using the Lotus Notes document management systems. Training is available to individuals and team at any time and guidance is available on the intranet.*

My comments

I commend the Ministry for appointing a dedicated trainer, and ensuring that all staff are contacted for a training session. I look forward to following up on its progress delivering IM training for staff over the coming months.

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[15] Respondents who answered that they received IM training within one year - 24.67; between one to two years ago - 18 percent; between three to four years ago - 10.67 percent; more than four years ago - 27.33 percent; never - 19.33 percent.

Respondents who answered that they received record-keeping training within one year 21.33 percent; between one to two years ago - 16.67 percent; between three to four years ago - 6.67 percent; more than four years ago – 22 percent; never - 33.33 percent.

Internal policies, procedures and resources

While it is not a legislative requirement, nor an assurance that compliance with the OIA will follow, I do expect as a matter of good practice that the Ministry develops or adopts policies and procedures that will assist staff to apply the requirements of the OIA consistently. In addition, staff should be supported by good systems, tools and resources that will enable them to effectively process requests and make good decisions consistent with the provisions in the Act.

To assess the Ministry's internal policies, procedures and resources, I considered whether it had accurate, comprehensive, user-friendly and accessible policies, procedures and resources that enable staff to give effect to the OIA's principle, purposes and statutory requirements. This includes policies, procedures and resources in relation to:

- dealing with official information;

- records and information management; and

- proactive release of information.

OIA charging policy

Agencies can charge for the supply of information under the OIA.[16] Indeed, they are required to consider fixing a charge rather than declining a request which requires substantial collation or research.[17] Agencies may choose to develop an OIA charging policy to guide decision making processes in respect of charging for the supply of official information. In addition to being consistent with the law, internal charging policies should meet the following criteria:

- The charges should be consistent with the Charging Guidelines produced by the Ministry of Justice MoJ;[18]

- The policy should be applied on a case-by-case basis; and

- The policy should be publicly available.

The Ministry provided me with a copy of its undated 'OIA Charging Guidelines' document as part of my investigation. These guidelines align with those produced by MoJ in respect of the dollar amount to be charged—being $38 per half-hour, with the first hour of work free-of-charge. It also provides some useful information on engaging with the requester which is in line with guidance produced by Office, such as:

- the requester should be contacted to inform them of the charges;

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[16]   Link to s 15(1)(a) OIA.

[17]   Link to s 18A(1)(a) OIA.

[18]   Link to the Ministry of Justice Charging Guidelines.

- in engaging with the requester, the Ministry should discuss how they might narrow their request to reduce or remove the need for a charge; and

- if the requester agrees to the charge, it is reasonable to request a deposit before beginning work on replying to the request.

However, the guidelines include some wording which may be confusing and even antithetical to the spirit of the OIA. For example, the guidelines state:

> *You should charge for any requests if the information is not relevant to the general public and collating the information requested will require significant time.*

The guidance produced my Office states that there may be good reasons to remit charges, taking a variety of factors into consideration. The wording the Ministry has used suggests a presumption to charge based primarily on the Ministry's assessment of relevance to the general public, while omitting to provide detail on how to make this assessment. It also ignores other factors such as whether charging could cause hardship to the requester, or whether the release of the information could promote fairness in a particular case. The guidelines provide no guidance for staff on how to consider what represents a *'significant'* amount of time.

The guidance also states that *'if it is necessary to specifically engage a person to action the request and the cost if more than $38 per half hour the actual cost may be charged'*. I note that fixing a charge is not intended to be an exercise in recovering the full cost in the absence of a request for urgency. Instead the charge must be reasonable and *'regard may be had to the cost of the labour and materials involved in making the information available'*.[19]

The Ministry should refine and update its charging guidelines to provide fuller details on considering how and whether to charge for the supply of information, including considering the remission of charges, and what tasks may and may not be charged for. It may wish to refer to my guidance on charging in updating its policy, and to be aware that my staff are available to provide advice on updated guidance once it has been drafted. I also encourage the Ministry to ensure appropriate document control measures exist, along with clear executive responsibility for the policy, to ensure regular reviews and updates occur. Once finalised, the Ministry should publish its charging guidance, in line with my comments under *Leadership and culture* about information of the type described in section 22 of the OIA.

Based on discussions with staff, I understand the Ministry's general practice is to provide information without charge—a laudable starting point, and one in line with the OIA's principle of availability. Nevertheless, the OIA obliges the Ministry to consider fixing a charge before refusing a request on the grounds of substantial collation and research, and the Ministry must be careful to ensure its practices do not inadvertently fetter its statutory discretion to fix a charge.

In its response to my provisional opinion, the Ministry advised that it was making some updates to its policy including developing a link to the Ministry of Justice guidelines and a statement making it clear to the public what the Ministry can charge and why it would decide

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[19] Section 15(2) of the OIA refers.

to do so. I look forward to seeing the Ministry's progress on this. If it would assist, I remind the Ministry that my Office is available to review and provide input on the policy before it is finalised.

Action points
Review and amend charging policy in accordance with my suggestions to provide details of: • the considerations around how and whether to charge for the supply of information; • remission of charges; and • tasks that may and may not be charged for.
Ensure appropriate document control measures exist, along with clear executive responsibility for the charging policy, to ensure regular reviews and updates occur.
Once finalised, publish the charging policy.

OIA guidance and other resources

As part of my investigation I reviewed the documents provided by the Ministry which comprise its OIA guidance for staff. This includes the content of the 'OIA Request and Responses' page on the Ministry's website, *Moh@wk*, targeted toward staff in business units who may be called on by the OIA Services Team to provide information for an OIA response; and the OIA Team Guide and OIA Workbook which are resources for OIA Services staff.

Overall, the OIA Request and Response document provides a concise overview of key aspects of the OIA and the Ministry's OIA handling process, including:

• the requirement to respond to OIA requests 'as soon as reasonably practicable', as well as the statutory maximum timeframe of twenty working days after the request is received;

• the circumstances in which it may be permissible to extend the timeframe to respond to a request;

• the Ministry's obligation to provide requesters with reasonable assistance and the timeframe to contact the requester to refine or clarify the request;

• when transferring a request is required and the timeframe for doing so;

• the Ministry's general approach to releasing staff names;

• the importance of scoping requests early in the process;

• a brief overview of some withholding grounds.

In addition to the above, I am pleased to see that the introduction to this document highlights the constitutional importance of the OIA, noting that it is an important tool for giving New Zealanders access to information about how agencies are functioning. It also encourages staff

to complete the Ministry's OIA training module, which I discussed earlier under *Organisation structure, staffing and capability*.

I strongly encourage the Ministry to add information about the public interest test to its guidance in relation to section 9(2) withholding grounds. I also note that the information for staff about the process of sending proposed responses to Ministers' office for '*noting*' under the no surprises principle, instructs staff to provide proposed responses five days in advance of the '*due date*' to the requester. I have concerns about this practice in respect of the Ministry's obligation under the OIA to provide requested information without undue delay, which I will discuss further under *Current practices*.

The OIA Team Guide and OIA Workbook comprise the guidance for staff in the OIA Services team. These go into greater detail about the Ministry's OIA process than the guidance for general staff. In addition to most of the aspects covered above, the OIA Team's guidance resources include:

- the definition of information held and a thorough list of the type of information this could include, even information 'in officials heads', text messages, voice messages and written notes;

- comprehensive details of all steps in the OIA handling process, including the sign-out process;

- some details about contacting requesters to help them clarify or refine their request;

- the distinction between parts 2, 3 and 4 of the OIA;

- the importance of determining the scope of the request early in the OIA handling process;

- information about the Minister's role in departmental OIA requests, noting that the final decision on an OIA request is the responsibility of the Ministry;

- the roles and responsibilities of different teams in the OIA process; and

- an 'Ombudsman checklist' which is a reproduction of an OIA processing checklist included as Appendix One in the *'The OIA for agencies'* guidance document produced by my Office.[20]

I'm pleased by the general tenor of the OIA Team Guide, which encourages staff to '*be as helpful as possible*' and reminds them that '*We are bound to respond as soon as we can. Using the full 20 days to respond should be the exception, not the norm.*'

The guidance for the OIA Services team could be enhanced by filling some important gaps. For example, I encourage the Ministry to bolster the guidance and/or the Workbook with information about:

- how to consider requests for urgency;

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[20] Link to The OIA for agencies.

- how to consider and apply the withholding provisions in section 6, 9 and 18 of the OIA (although agencies can use guidance produced by my office as a reference when considering the application of withholding grounds, it is good practice to collate their own materials to assist staff which include more specific examples based on the types of requests they receive frequently);

- the agency's duty under section 13 of the OIA to give reasonable assistance to requesters;

- how to apply the public interest test, and where this is applicable; and

- alternative methods of allowing access to information.

There is also an absence of detail in the training guide relating to Ministerial involvement in the Ministry's OIA decision-making, other than to state that staff should factor five days at the Minister's office in their consideration of how long it will take to prepare of response. I will discuss this in more detail under *Current practices*.

I was pleased to see that 90 percent of staff who responded to my initial survey were aware of the availability of OIA guidance, and the majority considered it both easy to access and easy to use:[21]

How easy or difficult is it to…	'Very' or 'somewhat easy'	'Neither easy nor difficult' or 'I don't know'	'Very' or 'somewhat difficult'
Find/access OIA policy and/or guidance documents	83%	13%	5%
Understand/use OIA policy and/or guidance documents	76%	14%	9%

In its response to my provisional opinion, the Ministry confirmed that revisions to its OIA guidance in accordance with my suggestions are underway. It is extremely encouraging that the Ministry intends to make these improvements. If it might assist, I remind the Ministry that my Office can be contacted to assist by reviewing and providing input on guidance material before it is finalised.

Action point
Review and amend OIA guidance incorporating my suggestions to include information about: • how to consider requests for urgency; • how to consider and apply the withholding provisions in section 6, 9 and 18 of the OIA (although agencies can use guidance produced by my office as a reference when

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[21] Percentages may not total 100 due to rounding

Action point
considering the application of withholding grounds, it is good practice to collate their own materials to assist staff which include more specific examples based on the types of requests they receive frequently);
• the agency's duty under section 13 of the OIA to give reasonable assistance to requesters;
• how to apply the public interest test, and where this is applicable; and
• alternative methods of allowing access to information.

Proactive release policy

As I will discuss further under *Current practices*, the Ministry proactively releases a large amount of information, including selected responses to OIA requests.

Even where an agency has robust proactive release practices in place, it is important that the practice is underpinned by a comprehensive policy, for a number of reasons. Developing and adhering to a proactive release policy is important to help to ensure an organisation-wide commitment to:

- establishing proactive release as a BAU activity;

- developing a sound and consistent approach to proactive release procedures and decisions; and

- ensuring there is management accountability for the policy, particularly when this forms a part of an agency's published, corporate strategy.

A proactive release policy might also include an agency's approach to keeping track of published documents which are subject to periodic change, such as policy documents, to ensure the published versions are updated, replaced or removed when applicable.

I am encouraged that the Ministry has developed a proactive release policy with the stated objective *'(t)o support open and transparent Government through the proactive release of material as appropriate.'* Although very brief, the policy contains a number of positive aspects, including the following list of *'Principles of Proactive Release'*:

- *Committed to supporting an open and transparent government*

- *Encourage public scrutiny, increasing trust and confidence in the Ministry*

- *Align with New Zealand's Open Government Partnership National Action Plan commitments*

The policy lists the type of information that will be considered for proactive release, which includes:

- Cabinet papers;[22]

- Policy documents;

- Strategic advice;

- OIA responses;

- Health reports;

- Meeting minutes;

In relation to the publication of OIA responses, I note that the policy states that *'(t)he Ministry will publish OIA request responses deemed in the public interest'*. It is not made clear which role is responsible for making this determination, nor on what criteria it is based. I consider the Ministry could benefit from adding details in this respect. I would suggest that, in doing so, the Ministry should ensure its policy aligns with the principle of availability in the OIA that information should be made available unless there is good reason to withhold it,[23] and one of the purposes of the OIA, being *'…to increase progressively to the availability of official information to the people of New Zealand…'*[24]

In line with increasing availability of information to all New Zealanders, I encourage the Ministry to include in its policy a commitment to releasing information in the most useable form in accordance with the New Zealand Government Open Access and Licensing framework,[25] and in line with New Zealand's obligations under the Convention on the Rights of Persons with Disabilities.[26]

The policy also contains some risk control elements, briefly mentioning potential risks around:

- privacy;

- suitability for publication;

- copyright; and

- defamation.

This aspect of the policy could be strengthened to include more details about the nature of these risks, and how staff should identify and mitigate them.

I note that the policy has no elements of document control, for example, the date the policy was developed, when it is due for review, and who has executive responsibility for

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[22] Based on Cabinet Office Circular CO (18) 4, all Cabinet and Cabinet committee papers and minutes must be proactively released and published online within 30 business days of final decisions being taken by Cabinet, unless there is good reason not to publish all or part of the material, or to delay the release beyond 30 business days.

[23] Link to s 5 of the OIA.

[24] Link to s 4 of the OIA.

[25] Link to New Zealand Government Open Access and Licensing framework.

[26] Link to Convention on the Rights of Persons with Disabilities.

administering the policy. I suggest the Ministry add these details. Ensuring policy documents are regularly reviewed and amended as necessary will help to ensure they remain relevant and fit-for-purpose.

In addition to its proactive release policy, the Ministry has proactive release guidance on its intranet, published in December 2019. This articulates a high-level commitment to proactively releasing information, stating:

> *Releasing information proactively is a key way we can demonstrate our commitment to accountability and transparency, building the public's confidence in the Ministry and the wider health sector we lead. It also helps meeting State Services Commission (SSC) expectations about proactive information release.*

It is also good to see that the Ministry recognises the potential benefit of proactively releasing information as a tool for reducing its OIA workload:

> *…proactively releasing information will mean we get fewer OIA requests in the long run as people will be able to search our website for previously released documents and might find what they're looking for without formally requesting it.*

However, as in the proactive release policy, I note that the guidance states that information should be released *'if it's likely to be of public interest'* without detailing the factors that would impact such a determination.

As I discussed earlier, under *Leadership and culture*, there may be an inconsistent approach to the proactive release of information among the Ministry's leaders. It is therefore particularly important for the Ministry to ensure its proactive release policy is robust, and based on clear principles which champion openness. The policy should also be strongly promoted among its senior leaders. A senior manager should be assigned strategic responsibility and executive accountability for administering the proactive release policy.

In its response to my provisional opinion, the Ministry confirmed that revisions to its proactive release policy in accordance with my suggestions are underway and that, once finalised the policy will be *'promoted and published internally, with an identified accountable Senior Manager.'*

Action points
Refine the proactive release policy incorporating my suggestions to: • ensure public interest considerations for releasing information are detailed and align with the principle and purposes of the OIA;   • include document control elements such as review dates and the role which holds strategic responsibility and executive accountability for the policy; and   • include a commitment to releasing information in the most useable form (in accordance with the New Zealand Government Open Access and Licensing framework).
Once finalised, promote the proactive release policy among senior leaders and staff.

Action points
Once finalised, publish the proactive release policy.
Ensure a senior manager is assigned strategic responsibility and executive accountability for administering the proactive release policy

IM systems and record keeping practices

The utility of the Ministry's IM systems for storing information and retrieving information when it is requested under the OIA, is my biggest concern resulting from this investigation. I am not confident that the Ministry's IM systems and record keeping practices facilitate the retrieval of information. Any inability to retrieve information that has been requested is a significant impediment to an effective and credible OIA practice. My concerns arise in part from numerous comments from staff in my online surveys which were overwhelmingly negative about the IM systems employed by the Ministry, and also from a contemporaneous investigation I conducted into the Ministry of Health's collection, use, and reporting of information about the deaths of people with intellectual disabilities.[27]

In that report, published in July 2020, I expressed my opinion that for the period under review, the Ministry's systems for the collection, use, and reporting of information about the deaths of people with intellectual disabilities receiving residential support, and associated recordkeeping, were unreasonable. The responses I received from the Ministry's staff during this current investigation into official information practices indicate that my earlier findings may be a microcosm of an agency-wide problem, not just an isolated area of concern within a single directorate of the Ministry.

When asked how to describe the IM systems at the Ministry, staff expressed some variable perceptions:

- Twenty seven percent of respondents said there was only one, centralised system for storing information.

- Twenty one percent of respondents said there were multiple systems and that it was clear how/for what type of information each should be used.

- Thirty-five percent of respondents said there were multiple systems in use but it was *not* clear how/for what type of information they should be used.

- The remainder of respondents selected '*other*' and responded by way of comment, of which I have included a sample below:[28]

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[27] Link to Off the Record Chief Ombudsman's report on the Ministry of Health's collection, use, and reporting of information about the deaths of people with intellectual disabilities.

[28] I note that none of the staff who responded to this question by way of comment spoke positively about the information management systems in use at the Ministry. There were a small number of comments that were neutral.

On the whole, the Ministry's systems for recording and accessing information are poor.

Very very poor filing and central management system. It needs a vast overhaul - both in terms of the practice and the technology itself.

There are several systems in use for different types of information – it is clear how/for what type of information each should be used - BUT access and searching is frustrating - slow and hit/miss.

Our information management system is antiquated and generally horrible, and it is amazing that anyone can find anything on it.

Our information management system is appalling.

One centralised system, but unclear how this should be used.

We still use Lotus Notes and it is user unfriendly to put it mildly.

The Ministry covers all aspects of health from research, policy and contracting to individual personal information. Systems are disparate, old and open to information abuse.

In my initial survey of staff I asked how difficult or easy it was to use the IM systems to store information; search for and find information; and to collate information. Respondents' answers are shown in the table below:[29]

How easy or difficult is it to…	'Very' or 'somewhat easy'	Neither easy nor difficult	'Very' or 'somewhat difficult'	I don't know
Use the IM systems to store information?	38%	13%	43%	6%
Use the information management system(s) to search for and find information?	20%	10%	66%	4%
Use the information management system(s) to collate information?	17%	10%	66%	7%

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[29] Answers may not total 100 percent due to rounding.

Two thirds of respondents considered it was 'very' or 'somewhat difficult' to use the IM systems to search for and to find information, and to collate information. This is of great concern to me in respect of the Ministry's ability to identify information within the scope of an OIA request and to prepare it for release. The difficulty in accessing information presents a risk not just to the agency's ability to adhere to OIA obligations, but also to effective administration generally.

A risk of using multiple, disparate IM systems is that their complexity (whether actual or perceived) may compel staff to develop their own methods of storing information outside shared systems. When information is not stored on a shared system, there is a heavy reliance on staffs' institutional knowledge when information needs to be retrieved, whether for the purpose of an OIA request or other operational reasons. When the staff who hold this knowledge leave, information can be effectively lost to the organisation. Some of the comments in my initial survey leave me concerned that this risk has been realised, with variable methods of information storage occurring at the Ministry that may result in staff being unable to retrieve information when it is requested under the OIA:

> *There are huge differences in filing practices between teams and individuals that create significant difficulties in locating information.*

> *Lotus Notes is a pig, very difficult to find records, very bad when trying to search, there are units with MOH that therefore do not use it and have other storage options.*

It is my opinion that the Ministry appears to have acted contrary to law in relation to its obligation under section 17(2) of the Public Records Act to ensure that information is stored in an accessible form, so as to be able to be used for subsequent reference. I recommend that the Ministry update, amend or otherwise improve its IM system in order to facilitate retrieval of information.

Some of the risks described above may be mitigated with comprehensive and on-going IM and record keeping training for staff, which I discussed earlier under *Organisation structure, staffing and capability*.

Recommendation
Implement improvements to IM systems to ensure that information is in an accessible form so as to be able to be used for subsequent reference to ensure compliance with section 17(2) of the Public Records Act.

The Ministry's response

The Ministry stated that it does not agree with my conclusion that it has acted contrary to the law in relation to storing information in an accessible form. It notes that its document management system is able to export documents as required by the PRA, and that its Managers complete a Legal Compliance Survey annually.

The Ministry also noted that in its most recent review conducted by Archives New Zealand, accessibility concerns were not identified.

However, the Ministry also acknowledged that no respondents to my staff survey described the IM systems positively, and it stated that it *'is currently considering a replacement enterprise content management system'* and that my *'feedback will be included in our consideration of the use of a different system in the future.'*

My comments

I acknowledge the Ministry's statement about the capacity of its document management system to export documents, and I reiterate that my concerns, and indeed those raised by the Ministry's staff, relate to the Ministry's capacity to search for and retrieve information. I also reiterate that my concerns do not necessarily relate only to the Ministry's primary document management system, but to its IM infrastructure as a whole, and the impact that multiple, disparate IM systems have on record keeping practices. I note the Archives NZ review took place in 2014. I sought comments from Archives New Zealand on this matter before forming my final opinion.

It is my expectation that the Ministry takes adequate steps to fulfil my recommendation to implement improvements to its IM systems. I will follow up on the Ministry's progress over the coming months.

Current practices

The effectiveness of the OIA is largely dependent on those who implement it on a day-to-day basis and how they apply the resources available to them to manage the realities of giving effect to the Act.

To assess the current practices of the Ministry, I considered whether:

- the Ministry's official information practices demonstrate understanding and commitment to the principle and requirements of the OIA;

- the Ministry's staff have a good technical knowledge of the OIA; and

- the Ministry is coping with the volume and complexity of requests, and decisions are compliant.

OIA handling practices

OIA Services

To gain an understanding of how the Ministry processes OIA requests, my investigators reviewed a selection of files relating to OIA requests. I have also reviewed some of the Ministry's responses to requests submitted on the *fyi.org.nz* website.

Overall, the files the Ministry provided showed some good OIA practices and adherence with the OIA. For example, I viewed a file in which the Ministry consulted with an external party on the information to be released. The Ministry expressed that, although the view of the external party would be considered, the final decision on releasing information would be the Ministry's, which is entirely appropriate. It is also good to see sound practice in relation to the release of officials' details. The Ministry's general approach is to release names and email addresses and only withhold mobile telephone numbers which is line with guidance I have produced on this subject.[30]

The Ministry also routinely provides additional, contextual information to assist requesters in understanding the information provided; and it typically acknowledges OIA requests promptly in writing, citing the date by which the requester can expect a response, based on the maximum statutory timeframe in the OIA.

Every response letter I have seen within this investigation references requesters' right to complain to me, though not all included the contact details for my office. It would be best practice to ensure these details are included in OIA response letters.

The Ministry's record keeping on OIA files appears somewhat mixed. While some of the files provided to me showed thorough records of all aspects of the OIA handling process, including the amendments suggested by proof-readers and peer-reviewers; scanned copies of written notes; and the Ministry's audit sheet, others seemed to be missing information. For example,

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[30] Link to Office of the Ombudsman guidance *Names and contact details of public sector employees*.

one file referenced consultation with the Ministry's legal team, yet the file did not contain any emails or file notes of conversations reflecting that consultation. A file was also provided to me where information was withheld to pursuant to 9(2)(b)(ii) of the OIA, yet no details were evident of the considerations made in respect of this determination, nor consideration of any competing public interest.

There are a number of reasons I suggest the Ministry embed good record keeping practices for OIA requests:

• the Public Records Act 2005 (PRA) requires every agency to which it is subject to create and maintain full and accurate records of its affairs;

• it will assist the agency in responding to requesters if they seek the grounds for withholding information, under section 19 of the OIA;

• it will assist the agency in responding to Ombudsman investigations;

• to ensure consistency between decisions, where the same or similar information is requested;

• to ensure effective quality control by enabling effective peer review and quality assurance; and

• information released under the OIA does not automatically attract protections under section 48 of the OIA. Instead, as the High Court has recently clarified,[31] section 48 operates as a positive defence, and it is the agency who bears the onus of demonstrating that information was released pursuant to an OIA request and in 'good faith'. It therefore would be prudent to keep records of decision-making in order to evidence 'good faith' release should any decision become the subject of a challenge.

The Ministry should also, where appropriate, keep records of the administrative steps behind OIA responses. Documenting the steps taken to search for information, and the number, location and type of any documents located, can assist staff handling similar requests in future, particularly if the request is for a broad range of information. In addition, recording the time taken to collate a sample of documents within the scope of a request for a large amount of information can assist agencies in considering whether to fix a charge for the supply of information, to extend the timeframe for responding to a request, or to refuse a request pursuant to section 18(f) of the OIA, as well as helping to provide context during any subsequent review of that decision by me.

It appears that very little information is given to requesters about the Ministry's consideration of public interest factors where information is withheld pursuant to section 9(2) of the OIA. No response letters in sample files I reviewed, nor that I have seen on the '*fyi*' website, contained details about any specific public interest considerations the Ministry weighed when making its decision. I consider this is likely a reflection of the training and guidance available to staff which, as I discussed earlier under *Organisation structure, staffing and capability,* contains

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[31] *Williams v New Zealand Police* [2021] NZHC 808 [19 April 2021], currently under appeal.

little to no information about considering the public interest described in section 9(1) of the OIA.

In addition to enhancing training and guidance on this topic, as I have already discussed, I suggested in my provisional opinion that the Ministry may wish to consider adding a prompt to staff in its template OIA response letters to include details for the requester about the public interest considerations specific to their request. This should not simply be a rote sentence stating that countervailing public interest considerations do not outweigh the decision to withhold information. It should promote genuine consideration of the public interest and be informative for requesters. The Ministry has advised that it has amended its template in accordance with my suggestion and I look forward to following up on its implementation over the coming months.

According to the Ministry's OIA Workbook, a proposed response may need to be reviewed by up to nine people before it is sent to the requester. If the Ministry also deems that the response should go to the Minister's office for '*noting*' (which I will discuss further under *Ministerial interactions*), this can increase the total number of steps in the review/sign-out process to ten. Staff are advised to factor two days for a response to be signed by a Deputy Director General and five days for the response to be noted by the Minister's office, meaning these two steps alone can take up to seven days in a process that should take 20 days at maximum.

I have a number of concerns about the Ministry's sign-out process. Agencies are required to make and communicate their decision to requesters as soon as reasonably practicable and I question whether the layers of sign out employed by the Ministry are necessary in every case. I am also concerned about the pressure placed on staff by the lengthy sign-out process, and the impact on the quality of draft responses they are able to produce in a compressed timeframe. As one staff member noted in response to my initial survey:

> *The sign out process is very extensive and requires many layers of sign off. It feels like the most amount of time is spent here, rather than collating the information. This signals to me that there is a lack of trust in staff.*

Based on OIA responses I have seen throughout my investigation, and on discussions with staff, it appears that the Ministry's practices around signing out OIA responses were, by necessity, adapted and streamlined as a pragmatic response to the challenges of the 2020 lockdown and the associated increase in OIA request volume. Some of these processes remained in place, post-lockdown, and have become the Ministry's 'new normal'. For example, key staff my investigators spoke to said that the sign-out process changed from a hard-copy to an electronic one during the 2020 lockdown, and this remains in place. I have also seen a shift toward the Ministry's OIA responses being signed out by managers and principal and senior advisors, rather than every response being signed out by a Deputy Director-General. This approach may be more pragmatic and appropriate depending on the nature of the response.

While I understand and support the Ministry wishing to use a less cumbersome sign-out process when facing a high volume of requests, it remains important that an actual person is the signatory to OIA responses. I have seen some recent examples of the Ministry responding

to OIA requests where the signatory is '*OIA Services*'. In order to meet the requirements of section 15(4) of the OIA, in the interests of accountability, and to ensure transparency for the requester in relation to who the decision maker was,[32] the signatory to OIA responses should be that of an authorised decision maker. Alternatively, it should be made clear that the email is sent on behalf of the authorised decision maker, with an appropriate record kept of the decision maker's approval.

Overall, I consider that a less administratively intensive approach to signing out OIA responses is likely beneficial for both requesters and for staff. I note, however, that it may create confusion where the Ministry's actual practice deviates from its written processes. Accordingly, I strongly encourage the Ministry to review and update its practices and guidance in respect of its OIA sign-out process, ensuring that:

- it employs a practice that allows it to comply with its obligation under the OIA to make and communicate its decision on OIA requests as soon as reasonably practicable;

- guidance and process documents make it clear which leadership tiers are authorised to sign out different categories of information request;

- the OIA Services team's actual practices are accurately reflected in guidance and process documents;

- roles which are able to sign out OIA responses have the appropriate, written authority from the CE consistent with section 15(4) of the OIA.

In its response to my provisional opinion, the Ministry has advised that a number of these action points are already underway, which is very encouraging. In particular, the Ministry notes that it is improving its documentation of the reasons for OIA decision making and administrative steps in the OIA process.

Action points
Record reasons for OIA decisions, including consideration of the public interest where applicable, for example in the cover sheet or in a file note.
Record administrative steps behind OIA responses including, where appropriate: • the steps taken to search for information; and • the time taken to collate a sample of documents within the scope of a request for a large amount of information.
Ensure full and accurate records of substantive telephone, face-to-face and other discussions in relation to the OIA handling process are created and maintained.

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[32] In *The Chief Executive of the Ministry of Social Development v L* [2018] NZHC 2528 [26 September 2018], the High Court found that anonymous decisions were contrary to principles of natural justice, as people could not detect or challenge bias if they did not know who the decision makers actually were.

Action points
Review and update practices and guidance in respect of the OIA sign-out process, ensuring that: • the Ministry employs a practice that allows it to comply with its obligation under the OIA to make and communicate decisions on OIA requests as soon as reasonably practicable; • guidance and process documents make it clear which leadership tiers are authorised to sign out different categories of information request; • the OIA Team's actual practice is accurately reflected in guidance and process documents; and • roles which are able to sign out OIA responses have the appropriate, written authority from the CE in line with section 15(4) of the OIA.
Ensure written policies, process and guidance documents are updated to reflect any changes in the Ministry's sign-out process.

Data Services Team

Until recently the Ministry webpage allowed an option for requesters to submit a request directly to its Data Services team. This team is able to respond to requests for information relating to population-level data sets. For example, this might include requests about immunisation rates, pharmaceutical reactions, or mortality rates. Data Services handle approximately 2000 to 3000 requests for information, per year. Of these, the Ministry estimates one to five per week are OIA requests.

I accept that many of the requests received by Data Services would not be considered as OIA requests as they do not seek data already held by the agency. Rather, these requests invite the agency to generate data through the exercise of complex skill, judgment, or interpretation; or to create information which is fundamentally different from the existing information held.[33]

Depending on what Data Services assesses the nature of a request to be and whether OIA technical expertise will be required, Data Services may refer it to the OIA Services team. In such a case, the request will be logged as an OIA request and it will be included in the OIA statistics collected and reported on by the Ministry internally, and to Te Kawa Mataaho Public Service Commission which publishes the statistics biannually. If the request is not referred to the OIA Services team and is handled by the Data Services team, it will not be included in OIA reporting statistics.

I understand that the Data Services team may also forward requests to the OIA Services team where the requester cites the OIA in their request. The OIA team may then contact the requester to advise them, or seek their approval for the Data Services team to process the

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[33] Link to *Information not held: A guide to sections 18(e) and (g) of the OIA and sections 17(e) and (g) of the LGOIMA*.

request. This strikes me as unnecessary and inefficient, and it leaves me with a concern about the accuracy of Ministry staff's overall understanding of the OIA and its requirements. A request for information held by an agency is an OIA request whether or not a requester cites the OIA,[34] and that fact therefore should not dictate which team within the Ministry handles the request.

Once it has been determined that a request is for information held by the Ministry and is therefore an OIA request, it does not necessarily have to be handled by the OIA Services team. On the contrary, it can be far more efficient for some OIA requests—such as straightforward requests from the media, or requests for a specific data set—to be handled by, respectively, the Communications or Data Services teams. Consequently, those teams need to be provided adequate OIA training, guidance and resources in order that staff:

- are able to recognise requests for official information;

- are aware of and adhere to OIA timeliness obligations;

- are able recognise where they are refusing any aspect of the request; and

- adhere to their OIA obligations under section 19 of the OIA where information is refused, which are to give to the requester –

    - the reason for its refusal and, if requested, the grounds in support of that reason; and

    - information concerning their right, by way of a complaint to me, to seek an investigation and review of the refusal.[35]

I discussed training for the Data Services team earlier, under *Organisation structure, staffing and capability*.

It is also my view that the Ministry should ensure that OIA requests handled by the Data Services team are included in the Ministry's OIA statistics. This will give a truer reflection of the amount of work the Ministry is doing to provide the public with official information. The Ministry has confirmed it will do this and I will discuss this further under *Performance monitoring and learning*.

Communications Team

The Ministry's Communications team handles requests from members of the media, such as journalists and bloggers. Often, these requests are for the agency to generate a comment on an issue, or for an interview. Requests of this nature are not covered by the OIA, because they are not for information held by the agency. However, where a request handled by the Communications team includes a request for information already held by the agency, this is an OIA request and it must be dealt with in accordance with the provisions of that legislation. It is

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[34] Section 12(1AA)(b) of the OIA explicitly says that a request '*does not need to refer to this Act*'.

[35] Link to s19 of the OIA.

therefore necessary for media advisors to have adequate knowledge of the OIA to be able to identify OIA requests and to understand their statutory obligations when dealing with them.

The Ministry's Communications team, like its OIA Services team, experienced an increased volume of requests during the 2020 lockdown. The Ministry advised me that, on its busiest day, the Communications team received an average of one query per minute. In response to the high demand for information the Communications team began holding a stand-up press conference fronted by the CE in order to respond to as many questions as possible and pre-empt information requests. The Ministry informed me that it held more than 200 '*stand ups'* between January 2020 and the time of writing my provisional opinion in late 2021. These have continued on a weekly basis as well as in response to additional demand, including when there were outbreaks of community cases of COVID-19 in February 2021 in August 2021. The Ministry live-streams the '*stand ups'* to make the information more accessible to the public. I commend the Communications team for seeking out new ways of providing information to the media and to the public.

I requested the Ministry provide records for a sample of information requests handled by the Communications team. Specifically, I asked for a copy of the request and response, as well as any other emails exchanged, and any file notes of substantive discussions (internal and external). After a number of requests and a significant period of time, the Ministry was able to provide most emails exchanged between the requester and the agency, and internal emails related to the requests. If there were any file notes made of internal, oral discussions, these were not provided. The Ministry staff needed to engage its IT group to try to access emails related to one of the sample files I requested, but later confirmed that none of the emails related to that file could be retrieved. This indicates that not all relevant material is maintained in an accessible form.

The Ministry keeps a 'media log' which summarises key details of the request and response but it is not, in itself, a sufficient record of the information request handling process. For example, details of internal discussions about how the Ministry should respond were not contained in the media log. Nor were the actual email exchanges between the Ministry and the requester. I suggest the media log may be a more useful and accurate record if relevant emails and file notes were linked to it for ease of access.

It is my opinion that the Ministry appears to have acted contrary to law in relation to sections 17(1) and 17(2) of the Public Records Act 2005, which respectively, require the Ministry to:[36]

- create and maintain a full and accurate record its affairs; and

- maintain records in an accessible form to enable use for subsequent reference.

Although I have made a finding against the Ministry, I will not make a recommendation in respect of the Communications teams's record keeping practices in this instance as the Ministry has affirmed to me its intention to '*enhance retention of information relating to correspondence'*, and notes that it will '*transition into using Sharepoint for document*

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[36] Link to s17 of the Public Records Act 2005.

management as part of modernising its work programme.' I have suggested, as an action point that the Ministry amend the Communications team's record keeping practices to ensure full and accurate records of substantive correspondence with requesters (including telephone conversations, meetings and verbal discussions), and any material internal discussions, are created and maintained in an accessible form

I will seek updates on the Ministry's progress toward transitioning to Sharepoint over the next year, along with its progress on implementing recommendations and action points resulting from this investigation.

Although the Ministry stated, in its response to my provisional opinion, that it considered that it maintained records '*appropriate to the volume and the significance of the interaction*', I note that it has a legislative obligation to be able to respond to requests for information made under the Ombudsman Act 1975 and the PRA. If a complaint had been made to me about that file for which the Ministry did not retain records, it would have become 'significant' indeed.

The media files provided by the Ministry show several examples of the Communications team refusing information and failing to provide the requester with the reason for refusal under the OIA. In several of the responses I reviewed, the Ministry provided information that was related to the topic of the request, but it did not specifically answer the question, and it did not acknowledge that the information was refused. Providing a broad response to a specific request without answering the question is an approach that undermines both the letter and the spirit of the OIA. It demonstrates a lack of awareness of OIA obligations on the part of the Communications team that the Ministry must address.

The sample files containing refusals also showed that requesters were not advised of their right to complain to me where information is refused. In addition to the sample files showing this, key staff also advised my investigators that informing requesters in the media of their right to complain to me, does not form part of the Communications team's practice.

Therefore, it is my opinion that the Ministry has acted contrary to law by not meeting its legal obligation under sections 19(a) and 19(b) of the OIA which, respectively, state that reasons must be given for any refusal or withholding of information, and that the agency must advise the requester that they can make a complaint to an Ombudsman to seek an investigation and review of the decision. I recommend that the Ministry amend its practice to ensure all responses to information requests, which contain full or partial refusal, are dealt with in accordance with the provisions of the OIA.

I appreciate that due to the demands of a 24-hour news cycle, media teams are often under significant pressure to respond to requests for information as soon as possible. In practice they often respond on the same day or, at most, within several days. The Ministry's Communications team operates on this principle and, where it considers that a request is so complex or voluminous that it will take more than a couple of days to respond to, or requires a high degree of technical knowledge of the OIA, it will pass the request to the OIA Services team. Those requests will be included in OIA statistical reporting; information requests handled by the Communications team are not.

I consider that the Ministry should ensure that OIA requests handled by the Communications team are included in the Ministry's OIA statistics. This will give a truer reflection of the amount of work the Ministry does to provide the public with official information. I will discuss this further under *Performance monitoring and learning*.

I appreciate that both the Communications team and journalists value the immediacy and informality of their interactions, which facilitate fast turnaround of responses. I also understand that my suggestions may require a cultural shift in the Communications team. This should be supported by strong messaging from senior leaders to reinforce that OIA requests which are handled by the Communications team must adhere to the OIA, and there is no reason that OIA-compliant practices should undermine relationships between the Ministry's Communications team and members of the media. Nor should OIA compliance inhibit the swift handling of requests. These requirements are not onerous. They are either to provide the information requested, or if not to provide the reason for refusal and reference to the right to complain.

Indeed, amendments to the OIA in 2015 made it clear Parliament intends that agencies can and should actively engage with requesters to assist them to make effective requests at the front end of the OIA process.[37] It is entirely consistent with the scheme of the OIA for agencies to enable officials to make quick, effective and accurate decisions, providing they meet the statutory requirements. OIA training tailored specifically for the role of staff in the Communications team would likely be of benefit to the Ministry in adhering to its statutory obligations. I discussed this earlier, under *Organisation structure, staffing and capability*.

Recommendation
Amend the Communications team's practices to ensure all responses to information requests, which contain full or partial refusal, are dealt with in accordance with the provisions of the OIA.

Action points
Amend the Communications team's record keeping practices to ensure full and accurate records of substantive correspondence with requesters (including telephone conversations, meetings and verbal discussions), and any material internal discussions, are created and maintained in an accessible form.
Ensure messaging from senior leaders reinforces that requests for information handled by the Communications team must adhere to the OIA.

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[37] See s 15(1AA) and (1AB) OIA 1982

The Ministry's response

In response to my provisional finding that the Ministry was in breach of sections 19(a) and (b) of the OIA, it expressed to me its concern that *'placing the constraints of the OIA over the work of (its) Media Team will add a layer of formality over those relationships and, despite the best endeavours of staff, will add to the time required to respond.'*

My comments

I am concerned by the Ministry's characterisation of the OIA as a *'constraint'* to be imposed *'over the work of the Media Team'*. The OIA is the legislation that underpins the Media Team's work, as it underpins any request for information held by the agency. Compliance with the OIA is not a constraint, or an optional extra, or a 'nice-to-have' only when the workload is low. It does not matter whether the OIA Team, the Media Team, or any other part of the agency processes a request; it must be handled in accordance with the OIA.

In response to the Ministry's concern about the added time it may take to respond; I note that the Ministry's Media Team makes a decision in every case about whether and what information to provide. It should take no additional time to make and communicate a correct decision based on the relevant legislation, being the OIA.

I don't accept the assertion that complying with the OIA in responses to journalists may damage *'cooperative relationship(s) with reporters'* due to a *'layer of formality'* over their interactions. There is no reason for a difference in the content or tone of their usual interactions, other than to communicate a correct decision. If, as the Ministry also asserted in its response to me, reporters are quite aware of the fact that their interactions with the Ministry are guided by the OIA, then this should not be jarring or surprising to them. I also note that section 19 of the OIA does not contain any exemptions based on the identity of the requester or their presumed level of awareness of the OIA; it applies to all requesters in every instance where a request is refused.

OIA handling during lockdown

The 2020 lockdown presented government agencies with numerous challenges to the maintenance of effective business practices. Agencies, teams and individuals had to establish new ways of collaborating, and had to adapt to working with limited or no access to hard-copies of documents, instead accessing electronic IM systems while working from home.

The OIA Services team was dealing with an additional challenge during the lockdown in that it was training a new intake of OIA advisors, remotely. This team was also heavily involved in the proactive release of information related to the government's COVID-19 response. With these pressures, in addition to a high workload of OIA requests, I commend the Ministry and its staff for maintaining a high rate of reported OIA timeliness compliance during the 2020 lockdown.

The Ministry provided me with the material it produced for staff to guide them on OIA handling processes during the 2020 lockdown. This consisted of 'key messages' to convey in relation to commonly asked or anticipated questions about, for example, abortion services during lockdown, mortality data, cancer treatment, and support for Māori and Pacific peoples. It also had information about the withholding grounds which may be applicable to requests of certain types relating to COVID-19 and the 2020 lockdown, including template wording to include in responses to requesters. It was positive to see that this contained the following messaging which highlights the Ministry's commitment to openness, even during a national state of emergency:

> *The Ministry knows there is significant public interest in COVID-19 and is responding to the substantial increase in demand for information from interested or concerned members of the public. We are working hard to ensure the New Zealand public is fully informed about the work being done to respond to COVID-19.*

The guidance was clearly intended to assist staff in fulfilling their OIA obligations and to streamline the process during a busy and pressured time, which is commendable. However, I am concerned that this guidance did not make it clear that all requests must still be considered on a case-by-case basis. For example, it gave the broad suggestion that staff decline under section 9(2)(a) of the OIA,[38] *'info(rmation) on cases/clusters'.*

While the protection of privacy interests is, of course, important and necessary, the guidance appeared to me to encourage a blanket approach to OIA handling that also, in a consistent theme for the Ministry, offered no information about considering any countervailing public interests. The Ministry should ensure that any guidance or policy it develops from a business continuity perspective relating to OIA handling makes it clear that OIA requests must be handled on a case-by-case basis.

During the lockdown the Ministry, by necessity, moved to an electronic sign-out procedure for OIA responses, as I discussed earlier in this chapter. I am pleased that this practice has remained in place post-lockdown as I consider the previous method of delivering soft-copies of

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[38] Section to 9(2)(a) provides that information may be withheld where it is necessary to protect the privacy of natural persons, including that of deceased natural persons (subject to the public interest considerations in section 9(1) of the OIA.

proposed responses to decision-makers for their signature is potentially time-consuming. In addition, the current process seems more likely to facilitate accessibility when compared to the previous practice of scanning signed copies of responses and emailing image-only PDFs to requesters. The Ministry should ensure that this aspect of practice is accurately reflected in its process documents and guidance.

I discussed some of the limitations of the Ministry's IM systems earlier, under *Internal policies, procedures and resources*. Overall, comments from staff in my post-lockdown survey relating to the utility of IM systems while working remotely, indicated that while systems were no more difficult to use to access information while working from home, they could sometimes be slower:

> *The only difficulty associated with [using IM systems] was just the speed that our EDMS operated at with us all working remotely. Filing and loading information was not as speedy as being in the office, but we still had access to all necessary systems and information.*

> *Our info management system is terrible, but didn't get any worse during lockdown.*

> *The information management system struggled when we first moved to remote working however it has since improved a lot! I found that it was difficult to access files during 9-5 hours and it worked better during after hours.*

The speed of IM systems when working remotely also arose as an issue for staff who were involved in the collation of information for proactive release on the government website *Unite against COVID-19*. I will discuss this further under *Proactive release practice*.

The Ministry may wish to review the utility of its IM systems for remote working to ensure they are fit for purpose.

The Ministry provided information on its OIA performance in the period from January to June 2020, which encompasses the period when the nation was in lockdown. I noted a relatively high number of extensions during this period (of the nearly 700 OIA requests received, the Ministry extended 159). The Ministry collects limited data on its use of extensions. Collecting, analysing, and reporting a greater range of qualitative data may assist the Ministry in understanding the reasons for the use of extensions to ensure they are being used appropriately. I will discuss this further under *Performance monitoring and learning*.

In its response to my provisional opinion the Ministry advised me that it will '*follow up with selected users to confirm their experience using IM systems while working remotely'*. It also advised that it will consider my comments in relation to business continuity planning when it reviews these plans in the first quarter of 2022.

Action points
Review the utility of IM systems in remote working situations to ensure they are fit for purpose.

Action points
Ensure any guidance or policy developed from a business continuity perspective relating to OIA handling makes it clear that OIA requests must be handled on a case-by-case basis.

OIA timeliness

The table below shows the Ministry's reported OIA timeliness statistics in each reporting period since Te Kawa Mataaho Public Service Commission implemented the reporting regime.[39]

Reporting period	Number of requests received	Percentage of requests handled on time
2015/16	1171	89.8
2016/17	957	84.7
1 July-31 December 2017	451	73.4
1 Jan-30 June 2018	543	92.4
1 July-31 December 2018	736	95.4
1 Jan-30 June 2019	690	96.5
1 July-31 December 2019	649	97.1
1 Jan-30 June 2020	662	96.7
1 July-31 December 2020	942	91.6

The Ministry fell to its lowest reported timeliness compliance in July-December 2017 when only 73.4 percent of OIA requests received an on-time response. Within 12 months, during which time the Ministry's centralised model of OIA handling came into effect, timeliness increased more than 20 percentage points to 95.4. Reported timeliness compliance reached a high of 97.1 percent in July-December 2019. I have been extremely impressed by the way the Ministry has turned around its performance in this area and I commend the Ministry and, in particular, the OIA Services team for the improvement.

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[39] Note that during the first two years of the regime, the figures were published annually. Bi-annual reporting began in the first half of the 2017/18 reporting period.

The Ministry's performance noticeably slipped in the July-December 2020 reporting period when it fell to 91.6 percent, the lowest since 2016/17. The primary cause of this is the striking increase to 942 requests received in this period, a nearly 50 percent increase on the previous six months. The Ministry advised that the pressure of the increased volume of requests was exacerbated by the OIA Services team not being fully resourced during some of this time due to staff attrition. This demonstrates to me that, although the Ministry has built an effective model for handling OIA requests, it is vulnerable when there is a spike in requests and/or a reduction in staff numbers in the OIA Services team. I discussed the Ministry's capacity for handling OIA requests earlier, under *Organisation structure, staffing and capability*.

The Ministry's OIA timeliness statistics are based only on the OIA requests handled by the OIA Services team. As I have discussed earlier, the Data Services and Communications team also handle OIA responses, therefore the statistics related to their OIA request handling should also be included in the Ministry's reported OIA timeliness statistics, as I will discuss further under *Performance monitoring and learning*.

Proactive release practice

The Ministry exhibits some excellent practices in relation to proactively releasing information about the work it does. It is frequently among the best performers in central government in terms the volume of published OIA responses. This reflects the CE's philosophy around proactively releasing information, as he described it in a meeting with me: '*I have the philosophy to front foot issues.*'

In the July-December 2018 reporting period, the Ministry reported proactively publishing only 11 responses of the 736 OIA requests it received. In the next reporting period this increased to 265 published responses of 690 requests received. This made the Ministry a clear leader among central government agencies in the practice of proactively releasing OIA responses, and I commend its progress in this area.

In the January to June 2020 reporting period, which covered the time the country was in lockdown, the number of proactively released OIA responses fell to zero. Although this is unfortunate, given the challenges and the volume of work it faced as a result of the COVID-19 pandemic and lockdown it is understandable. Although no OIA responses were proactively published during this time, the Ministry devoted significant time and resources to preparing information to be proactively released on the government's *Unite Against Covid-19* website,[40] as required by Cabinet, which I will discuss further below. In response to my post-lockdown survey of staff, 74 percent of respondents considered that there was either an increase, or no change in the priority given to proactively releasing information over lockdown; only seven percent considered that the proactive release of information was given decreased priority.[41]

I consider that excellent practice for agencies where the normal programme of proactively releasing information is disrupted would be to retrospectively publish the information when

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[40]   Link to Unite Against Covid-19 website.

[41]   A remaining 19 percent of respondents said they 'didn't know' the agency's approach to proactive releasing information over lockdown.

the resumption of normal business resumes and capacity allows. The Ministry took steps to do so, in November 2020 releasing more than 30 responses to requests received between January and March 2020. This effort is especially laudable given that the Ministry was still receiving a higher than normal volume of requests during this time. I also commend the Ministry for the frequency with which it publishes OIA responses – I note that throughout 2021 and up until the time of writing this report, the Ministry's website has been routinely updated with new responses several times a month.

In addition to a robust practice of proactively releasing OIA responses, the Ministry also proactively releases a large number of statistical publications and data-sets on a variety of health topics including:[42]

- suicide statistics;

- research papers;

- Māori, Pacific and Asian health;

- immunisations;

- cancer;

- diabetes; and

- alcohol use.

As I discussed earlier, under *Internal policies, procedures and resources,* no matter how robust the practice may be, it should be underpinned by policy in order to embed a consistent approach to proactively releasing information, across the Ministry.

Proactive release of information related to Covid-19

Cabinet required that information about Covid-19 be proactively released in tranches. Given the nature of its role in the Covid-19 response, the Ministry was required to prepare and release extremely large volumes of information. I have been advised in meetings and through my post-lockdown online survey that staff involved in preparing this information were required to work long hours and through weekends to ensure the deadlines for proactively releasing information about the government's Covid-19 response were met. I am also advised that the limitations of the Ministry's IM systems when working from home required some staff to seek clearance to be considered 'essential workers' in order to come to the workplace to fulfil Cabinet requirements.

I appreciate the commitment shown by the Ministry's workforce towards making available information that is in the public interest. Through this work they have contributed to allowing the public access to information that has led to New Zealand's Covid-19 response being hailed as one of the best in the world.[43] The high levels of public compliance with lockdown rules in

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[42] Link to the Ombudsman's statistics and data sets webpage.

[43] Link to Lowy Institute Covid Performance Index.

particular and with Covid-19 regulations generally helps evidence the trust and confidence New Zealanders had in their executive government.

The Ministry and, in particular, the staff involved in preparing this information for release should be immensely proud of their efforts.

I encourage the Ministry to continue its focus on proactively releasing information both in response to Covid-19 and more generally. A respondent to my post-lockdown survey stated their view that:

> *The practice of very prompt release of substantive papers after decisions were made was a great practice and should be encouraged for the future. Our advice should generally be … open to public scrutiny in real time.*

I agree.

Ministerial interactions

The Ministry is responsible to the Minister and Associate Minister of Health, as well the Associate Minister of Health (Māori Health), and the Associate Minister of Health (Pacific Peoples).

Ministry officials have an obligation to their Ministers which is referred to as the '*no surprises'* principle.[44] This principle is defined in the Cabinet Manual, and states that:

> *As a general rule, [officials] should inform Ministers promptly of matters of significance within their portfolio responsibilities, particularly where these matters may be controversial or may become the subject of public debate.*

In the context of OIA handling, this means that, at times, it is appropriate for the Ministry to notify the Minister's office, for their information only, about departmental OIA responses. At other times, it may be appropriate for the Ministry to consult with a Minister's office on a proposed response. Consultation is appropriate when an agency needs the Minister's input in order to make a proper decision on a request. The Ministry refers to the former as its '*noting process'*. In its response to my initial questionnaire, the Ministry advised me that it:

> *…has not developed a formal recorded protocol with the four Ministers' offices around handling of OIA responses. However, an unwritten protocol is in place and functioning well with each Minister's office. This involves a noting process in line with the no surprises convention between Ministers and the Ministry.*

Although, at this stage, the Ministry does not have a formal, written protocol on Ministerial interactions, there is some written guidance for staff on how these engagements, including its '*noting process'* should be conducted. The Ministry's '*OIA Workbook'* which forms part of the guidance for staff in the OIA Services team, states that:

> *The Minister's office notes requests that are from the media, from members of parliament, not for profit organisations, requests that are for briefings/aides*

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[44] Link to the Cabinet Manual, see section 3.22.

> *memoire and things that attract wider public, political or media interest. Send this over to them for noting **five** days before the due date to the requester.*

The Ministry also provided me with the content of a page on the Ministry's intranet '*Moh@wk*' which offers guidance to all staff about the Ministry's official information process, including Ministerial interactions. In relation to the timeframe for providing proposed responses to Ministers' offices for '*noting*' the intranet page states that:

> *The service standard with each office is 5 working days i.e. each OIA needs to be received by each Minister's office at least 5 working days prior to 'due date'.*

Guidance produced by my Office on the topic states that, when consulting a Minister on a response, the Minister's office may be afforded a reasonable period of time within which to provide appropriate input. In relation to '*fyi*' or '*notification*', the guidance states that, where possible, decisions should be notified to the Minister at the same time as they are communicated to the requester, although in some cases a short period of advance notice may be required to ensure the Minister is properly briefed. Agencies must ensure that they comply with their statutory obligation to make and communicate a decision to the requester as soon as reasonably practicable, and to release the information without undue delay. A blanket application of a five working day notice period on proposed OIA responses means the Ministry risks being routinely in breach of its obligation to make and communicate a decision on each request '*as soon as reasonably practicable'*.

In addition to my concerns about the Ministry's statutory obligation to requesters, I encourage the Ministry to consider the impact on staff of a five day '*noting*' practice, particularly when combined with a sign-out process which can be time-consuming (discussed earlier, under *OIA handling practices*). Together, these practices significantly reduce the amount of time allowed to staff to locate and review information and compose the response. This may result in undue stress for staff, and undoubtedly impacts the quality of the Ministry's responses.

I am therefore encouraged that the Ministry appears to have amended its practices in respect of Ministerial interactions as a result of the pressures of the Covid-19 lockdown and the associated increase in the volume of requests since the lockdown ended. Based on discussions with staff, I understand that the Ministerial Services team has adopted a practice of sending some responses to the Ministers' offices for '*noting*' at the same time or shortly before they are due to requesters, rather than allowing five days in all cases. It is also positive to see that the Ministry makes clear on the cover sheet that accompanies responses sent to Ministers' offices whether it is being sent for consultation or for '*noting*'.

I commend this approach, which I consider is more consistent with the intention of the '*no surprises*' principle as it is outlined in the Cabinet Manual, and with my guidance. However, like its sign-out processes—which I discussed earlier under OIA handling—it concerns me that the Ministry's practice in this area may be out of step with its written guidance for staff. I consider it is timely for the Ministry to review its practices on interacting with Minister's offices on departmental OIA requests, identifying opportunities where its obligation under the 'no surprises' principle can be satisfied by:

- providing Ministers' offices the topic only, or a brief synopsis of the response rather than the proposed response in its entirety; and

- providing the response to the Ministers office at the same time, or slightly before it is sent to the requester rather than a number of days in advance.

A Ministry's notification process with Ministers' offices is not about seeking clearance, approval, or sign-off from the Minister. As my predecessor, Chief Ombudsman Dame Beverley Wakem commented:[45]

> Seeking clearance or approval from a Minister on responses to requests for official information is an abdication of the agency's responsibilities and accountabilities under the OIA and would be in breach of section 15(4) [of the OIA].

In the sample OIA files provided by the Ministry, I saw an example of the exchange between the Ministry and a Ministers' office on a departmental response in which the Ministry was waiting for confirmation before sending its proposed response to the requester. If the Ministry considers that it cannot send a response until a Ministers' office confirms that it has been *'noted',* it appears to me as being '*approval*' by a different name. This is an inappropriate use of the '*noting*' process and it appears inconsistent with the intention of the '*no surprises*' principle. I suggest the Ministry review its practice in this respect to ensure the '*noting*' process is not a proxy approval process.

The Ministry should ensure that its updated practices are reflected accurately in its written guidance. In addition to guidance around its interpretation of the 'no surprises' principle in relation to notifying Ministers' of its decisions on OIA requests, I expect agencies to have clear, written processes guiding their interactions with Ministers' offices, which should include:

- how the agency distinguishes between consulting with the Minister's office on a request, and advising the Minister of a request as an '*FYI*' only;

- whether all responses deemed 'of interest' are provided in full to the Minister's office, or whether some are notified by subject or a summary only;

- what factors would cause the agency to consider a request to be 'of interest' to the Minister;

- the process in the event the Minister's office wishes to raise concerns with the agency;

- the timeline for providing responses or response summaries to the Minister's office; and

- the process when the Minister's office is unable to respond to a consultation within the statutory timeframe to respond to the requester.

I encourage the Ministry to develop a clear policy and/or guidance to anchor its processes around Ministerial interactions on OIA responses. Ideally, this would be discussed and agreed with Minister's offices.

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[45] Link to Not a Game of Hide and Seek report at page 113.

Action points
Review practices around interactions with Ministers' offices on OIA responses to ensure practices align with the 'no surprises' principle and are not a proxy approval process.
Develop written policy/guidance on interactions with Ministers' offices, which should include: • how the agency distinguishes between consulting with the Minister's office on a request, and advising the Minister of a request as an '*FYI*' only; • whether all responses deemed 'of interest' are provided in full to the Minister's office, or whether some are notified by subject or a summary only; • what factors would cause the agency to consider a request to be 'of interest' to the Minister; • the process in the event the Minister's office wishes to raise concerns with the agency; • the timeline for providing responses or response summaries to the Minister's office; and • the process when the Minister's office is unable to respond to a consultation within the statutory timeframe to respond to the requester.

The Ministry's response

The Ministry has advised that its OIA policy, which it has published in accordance with my suggestion, *'…includes a section on working with Ministers' offices, which details how the Ministry interacts with the Ministers' offices for the purpose of OIAs.'* It therefore considers that the action point to develop written policy/guidance on Ministerial interactions is complete.

My comments

I commend the Ministry for publishing its OIA policy. I acknowledge this contains some guidance on interactions with Ministers' offices, but I consider this requires more detail for the action point to be considered complete. For example, the Ministry's OIA policy has no information about the timeframes involved in providing responses to Ministers' office, nor the processes in the event the Minister's office wishes to raise concerns with the agency, or is unable to respond to a consultation within the statutory timeframe to respond to the requester.

In relation to the action point to review practices around interactions with Ministers' offices, the Ministry advised that its OIA policy '*outlines the 'no surprises' policy clearly'*. I wish to reiterate that this action point relates to the Ministry's practice rather than its policy, in order to ensure the '*noting*' process is not a proxy approval process.

Accessibility and usability of official information releases

All public service and non-public service agencies are required to meet the NZ Government Web Accessibility Standard.[46] The standard is intended to make web content more accessible for users with a range of disabilities, including visual, auditory, physical, speech, cognitive, language, learning and neurological disabilities. Although the accessibility standards apply to website content, I consider it is best practice to apply these standards to information released in response to OIA requests.

I have produced a guide[47] which includes a section on New Zealand's international and domestic obligations to ensure disabled people have equal access to information. This section also provides advice on making information accessible. It should be noted that not all members of the public have access to internet, and some may require information in other formats (including, but not limited to, audio, braille, printed materials, New Zealand Sign Language, and Easy Read) to cater for different access needs. The public should be advised that they can ask for accessible formats if required.

Agencies should publish information in a format that accommodates the use of assistive technology, such as screen readers. For example, publishing or providing information in an 'image only' format (such as a scanned PDF or JPG) is not accessible for blind and low vision individuals using screen readers, or those with learning disabilities using read aloud applications. It may also make the information less easy to use in general, by limiting the ability to search documents by keyword. Where PDF documents are provided in response to an OIA request, they should be searchable and visual elements should be tagged with alternative text. Published PDF documents should be searchable, and ideally be accompanied by an accessible Microsoft Word version. In its response to my provisional opinion the Ministry explained that it did not publish Microsoft Word versions of published OIA responses but it could provide responses in different formats on request. This is acceptable, though I note that accessibility standards, and my comments, apply to all proactively released material not only OIA responses.

I note that the majority of reports and documents on the Ministry's 'General information releases'[48] webpage are published in PDF format only. It may assist a broader range of users if the Ministry also published accessible word versions of reports where possible.

It is good to see that proactively released responses to OIA requests are searchable. In its response to my initial questionnaire, the Ministry advised me that:

> *(i)t is now mandatory for the OIA Services team to use Adobe Acrobat Pro software to ensure we are capable of text enriched documents. Internally, the Ministry's policy is to provide information for release digitally rather than print and scan. This*

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[46]   Link to NZ Government Web Standards.

[47]   See section 'Making sure the information is accessible' on p 11 of the Office of the Ombudsman's Proactive release: Good practices for proactive release of official information guide.

[48]   Link to General information releases webpage

reduces further the risk of non-searchable information being released and fosters a better digital document management culture.

Action points
Ensure the text of all PDF documents published and/or released in response to OIA requests are searchable and not 'image only'; ensure visual elements are tagged with alternative text.
Where possible, publish accessible Microsoft Word versions of proactively released material in addition to PDF versions.

The Ministry's response

The Ministry said that it did not intend to complete the action point '*(w)here possible, publish accessible Microsoft Word versions of proactively released material in addition to PDF versions.*' It stated that '*OIA responses are currently published as searchable PDFs, which meet the accessibility standards…The OIA Services team assists requesters who ask for a different format.*'
It also said that it considered the action point to ensure the text of all PDF documents was searchable and that visual elements were tagged with alternative text was completed, as this was the '*current process for publishing OIA responses*'.

My comments

The Ministry should note that my action points about accessibility relate to all proactively released material, not just published responses to OIA requests.

Performance monitoring and learning

The OIA does not impose specific requirements on agencies in relation to record keeping and management of requests they receive for access to information. However, the Ombudsmen have consistently advocated maintaining a full audit trail for any decision made by an agency. Formulating a decision on a request for access to official information is no different. Once this information is recorded, agencies have a wealth of information that can be used to inform business planning and future decisions concerning access to information—but only if it is captured in a way that is meaningful, facilitates subsequent analysis, and regular monitoring and reporting occurs.

To assess performance monitoring and learning of the Ministry in relation to requests for official information, I considered whether:

- the Ministry has an established system for capturing meaningful information about its official information activities and established appropriate and relevant performance measures;

- there is regular reporting and monitoring about the Ministry's management performance in respect of official information requests; and

- the Ministry learns from data analysis and practice.

Learning from investigations and guidance

In its response to my initial agency questionnaire, the Ministry has advised that it does not have a formal process for learning from Ombudsman investigations. Following my provisional opinion, however, it advised me that its Government Services Team *'reports to the Executive Leadership Team on a six-monthly basis on the findings from the Ombudsman.'* It also advised me that the OIA Services and Health Legal teams review the outcome of Ombudsman investigations to identify opportunities for improvement and circulate these to relevant staff. I am pleased that the Ministry takes steps to improve its practice based on Ombudsman investigations.

In addition to reviewing the outcome of Ombudsman investigations, it is important that the Ministry has processes in place for learning from the range of guidance, opinions and case notes, and Quarterly Reviews I publish. The Ministry would benefit from a formalised system for regularly scanning for new material from relevant sources; ensuring the appropriate staff are made aware; and incorporating any lessons into guidance and practice.

There is merit to the Ministry incorporating practice improvements into its written policies and guidance. This will ensure that information is retained beyond the institutional knowledge of staff the information is circulated to, and is easily accessible to staff. The Ministry advised me that this is the responsibility of the Manager of the OIA Services team.

Action point
Formalise the process for learning from Ombudsman investigations and guidance, and reflect the learnings from these into OIA policy, guidance and procedures.

Collection, analysis and reporting of OIA data

The Ministry's information management system records a limited set of information regarding OIA requests it receives. The data is focused on compliance with the maximum statutory timeframe, and also notes whether an extension has been granted and whether or not the response needs to be sent to the Minister's office for '*noting*'. Timeliness is a key aspect of OIA performance, and this focus on timeliness is very likely why the Ministry has had such success turning around its performance in this respect since 2015/16. It is not the only factor in OIA handling, though, and the Ministry would likely benefit from expanding its focus to include more qualitative aspects.

I encourage the Ministry to expand the range of data it collects, as this may assist in further lifting the quality of its responses and the efficiency of its processes. For example, although the Ministry records whether or not an extension has been granted, it does not keep a discrete record of the reasons for extensions, nor the length of extensions.[49] Collecting and analysing a greater range of qualitative data may help the Ministry to detect potential systemic issues, such as:

- whether extensions are used appropriately;

- workload issues;

- areas of the business which require training; and

- whether there may be issues with information storage or retrieval (for example, where extensions are made on the basis that substantial collation is required; or where information is refused because it cannot be found);

I encourage the Ministry to expand the range of data it collects and analyses. This may include:

- the type of request (Part 2, 3 or 4 of the OIA);

- the type of requester;

- the number and reason for transfers, and whether the transfer was made in time;

- the number, length and reason for extensions;

- the business unit or request topic that require extensions;

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[49] Based on sample files I reviewed, the Ministry advises requesters of the reason and length of extensions, in accordance with section 15A(4) of the OIA. However, it does not keep a discrete record of data about extensions which would facilitate review and reporting. Rather, the data is kept within individual letters notifying extension. Retrieving data on the reasons for extensions would therefore require a manual search, retrieval and review of each letter.

- the outcome of the request (granted in full, granted in part, refused in full);

- the number of charges made and collected;

- whether referrals to the Minister's Office are for consultation or notification;

- the time from receipt of the request to communication of the decision; and

- the time from receipt of the request to release of the information.

In response to my provisional opinion, the Ministry advised that it would '*consider which further qualitative data it can collect and analyse to assist in further lifting the quality of its responses and efficacy of its processes*', which is very encouraging.

The Ministry has advised that data information requests handled by the Data Services team are not included in OIA statistical reporting, except where Data Services receives a request which is subsequently passed on to the OIA Services team to handle. The Ministry has also advised that media information requests[50] handled by the Communications team are not included in OIA statistical reporting. Media information requests and data information requests[51] should be captured and reported to senior leadership, consistent with other official information requests, to ensure the Ministry has a comprehensive picture of its OIA performance. They should also be included in the statistics reported biannually to Te Kawa Mataaho Public Service Commission for publication. In response to my provisional opinion, the Ministry advised that it would incorporate requests handled by the Data team in OIA statistical reporting. I look forward to seeing the progress on this.

The OIA Services teams is part of the Ministry's Government Services group which, collectively, produces responses to written and oral parliamentary questions, Ministerial letters, Ministerial OIA requests and departmental OIA requests. This group produces a number of reports to senior leadership on its overall performance, which includes OIA performance:

- A daily data report consisting of work totals, inflow and outflow, work that is due soon and overdue work. This data is broken down by type of correspondence.

- A weekly update to the Executive Leadership team showing official correspondence that is due in the upcoming week, broken down by type of correspondence, and correspondence currently being actioned, broken down by type of correspondence and directorate.

- The *Organisational Performance Report to OLT*, a monthly report showing the volume of official correspondence received and completed in the specified month, and timeliness percentages for the month and year-to-date.

- A biannual memo which includes six-monthly trends in OIA request volumes, complaints submitted to me and current and future process improvements.

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[50] As distinct from media requests for a comment or interview.

[51] Except data requests consisting of newly created information.

I note that reporting various types of work as combined official correspondence statistics may inadvertently conceal issues a team is having with specific types of work. For example, the *Organisational performance report* shows timeliness percentages for all types of work in the Government Services group. It does not distinguish departmental OIA performance. I am pleased that Government Services' weekly update and daily data report each distinguish between types of work in this way, and that senior leadership is regularly informed of the progress of official correspondence work.

In addition to expanding the range of data the Ministry collects, I encourage the Ministry to expand the range of data it reports to senior leadership to include indicators that would help improve the Ministry's performance in a variety of ways, such as:

- reasons for refusing requests or withholding information, which can enhance existing monitoring of request trends and promote compliance with the Act;

- average response time, which can help quantify workload and inform resourcing decisions; and

- reasons for extensions or delays, for the reasons detailed above.

Action points
Collect and analyse further qualitative data on the handling of OIA requests.
Improve details in regular reporting of statistics to senior leadership.
Include official information requests handled by the Communications team in OIA statistical reporting.

Quality measures

As discussed in *Current practices*, the Ministry has an extensive sign out process for OIA responses which includes multiple layers of proof-reading, peer review and manager review. While I consider the Ministry would benefit from a less administratively intensive approach to its sign-out process, I consider peer review an important tool to ensure consistent, high quality responses and I encourage the Ministry to ensure peer-review is still an aspect of any amended sign-out process.

I note that the Ministry does not have a post-closure, quality assurance process. Quality assurance is conducted once the process of responding to the request is complete, and has a broader focus on the effectiveness of the process as a whole. I encourage the Ministry to develop a quality assurance process for completed requests, given the valuable qualitative data that can be gained. When analysed effectively, information from a quality assurance process can be used to inform improvements in the OIA process, including:

- ensuring consistency in the agency's approach across similar requests;

- determining the reason for any delays; and

- identifying areas for training.

The quality of OIA responses may encompass factors such as a robust and adequately documented decision-making process, the inclusion of contextual information to assist requesters, and the quality of response letters. Establishing a system of quality assurance could help the Ministry identify where additional training needs or support may be needed in a particular business unit, and to recognise excellent performance.

In response to my provisional opinion the Ministry advised me that it would *'consider whether it is necessary to establish a formal post-closure QA process for completed OIA requests.'*

Action point
Develop a quality assurance process for completed OIA requests.

Appendix 1. Official information practice investigation — terms of reference

Ministry of Health

22 November 2019

This document sets out the terms of reference for a self-initiated investigation by the Chief Ombudsman into the practices of the Ministry of Health relating to the Official Information Act 1982 (OIA).[52]

Purpose of the investigation

The investigation will cover how the Ministry work to achieve the purposes of the Official Information Act through its processing and decision-making on requests for information. It is essentially a follow-up to the 2015 investigation.

The investigation will assess how well the agency has implemented the action points raised in the 2015 investigation of its OIA practices, and will also consider its current official information practices, policies and culture. This will include consideration of the Ministry's supporting administrative structures, leadership and culture, processes and practices, including information management, public participation and proactive release of information, to the extent that these relate to achieving the purposes of the OIA.

The investigation will identify areas of good practice, and make suggestions for improvement opportunities where areas of vulnerability are identified.[53]

Scope of the investigation

The investigation will evaluate each agency's leadership and culture, organisational systems, policies, practices and procedures needed to achieve the purposes of the OIA, with the primary focus being how each agency has progressed with its implementation of action points from the 2015 *Not a Game of Hide and Seek* investigation. We may also investigate any new issues relating to the agency's official information culture, policy and practice that arise through the surveys or review of policies and guidance documents about Official Information processing, records management and information management.

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[52] See sections 13(1) and 13(3) of the Ombudsmen Act 1975 (OA).

[53] Formal recommendations under the OA will only be made if the Chief Ombudsman forms an opinion that a decision, recommendation, act, or omission by the agency was unreasonable or contrary to law under section 22 of the OA.

The investigation will be underpinned by a set of indicators, grouped around the following dimensions:

- Leadership and culture

- Organisation structure, staffing and capability

- Internal policies, procedures, resources and systems

- Current practices

- Performance monitoring and learning

It will also compare data collected in, or relating to, the period of the 2015 investigation with current data to assess whether the agency has made improvements in any area(s). This data may include:

- The Ministry's OIA statistics

- Complaints received by the Office of the Ombudsman

- Results from agency, staff, and public surveys

- Content on an agency's website.

A sample of decisions reached by the agency on individual OIA requests may be considered as part of this investigation, to assist the Chief Ombudsman's understanding of the agency's official information practices.

If evidence emerges concerning specific examples of OIA breach, then a determination will be made in each case as to whether it can be addressed adequately within this investigation, or whether a separate stand-alone intervention is warranted. Any process issues which can be resolved during the course of the investigation will be addressed immediately.

Investigation process

The Manager Official Information Practice Investigations will work with a team of Senior Investigators and Investigators to assist the Chief Ombudsman in conducting the investigation. The investigation team will liaise with your nominated contact official during the investigation. Information may be gathered through the processes set out below.

Information gathering

Information will be gathered through desk research, a survey of each agency's official information practices, a staff survey, meetings with key staff, and a survey of the public. A sample of decisions reached by the agency on individual OIA requests may also be requested and considered as part of this investigation. As would be the case with any investigation conducted by the Ombudsman, any information requested of an agency by this Office during this investigation will be subject to the secrecy provisions in section 21 of the Ombudsmen Act 1975 (OA). Requests for information will be made pursuant to section 19 of the OA.

Desk research

A review of publicly available information including the agency's annual reports, strategic intentions documents, and any other material made available on its website. Desk research will also review data and information held by the Office of the Ombudsman (for example, statistical data), and statistics published by the Ministry regarding reported OIA timeliness.

Surveys

A survey of the agency, including requests for the supply of internal documents about:

- The steps taken to implement action points suggested by the Chief Ombudsman in the 2015 investigation

- Policies and guidance documents related to official information processing, record-keeping and information management

A survey of agency staff, canvassing:

- Views of the agency's leadership and culture in relation to official information and transparency more generally

- Views of the agency's policies, processes, training and resources relating to official information

- Views of the agency's record-keeping and Information Management systems, policies, training and resources, inasmuch as these impact the agency's ability to discharge its official information obligations

A survey of members of the public (including journalists/other media) that have sought information from the agency. The Chief Ombudsman may issue a media release that includes a link to the public survey, and will ask each agency to include a link to the survey on its public website.

Note that we may also request any other documents or information required to investigate issues that arise as a result of meetings with staff; and agency, staff and public surveys.

Meetings

The investigation team will meet with:

- the tier-two manager responsible for the agency's official information processing function; and

- the manager of the team that processes official information requests.

In addition, further meetings may be scheduled with other staff members after information collected from the agency and through staff and stakeholder surveys has been analysed by the investigation team.

My staff will also meet with staff of the Minister's office who liaise with the Ministry of Health on responses to OIA requests.

Staff members selected to meet with the investigation team will be provided with information about the meetings process and the purpose of the meeting. The meetings will be digitally (audio) recorded. Meetings are likely to take approximately one hour.

Other

A review of the agency's intranet.

Follow up period

After information has been gathered through the methods outlined above, the investigation team may request additional information or clarification from the agency on points that may have arisen throughout the course of the investigation, to assist our understanding of matters of fact and to provide the opportunity for further relevant information to be supplied.

Reporting

Draft report

The draft report of the Chief Ombudsman's investigation will incorporate good practices as well as any issues that may have been identified during the investigation. The draft report will outline the Chief Ombudsman's provisional findings and, when relevant, identify the suggestions and/or recommendations that may be made to improve the agency's official information practices. The draft will be provided to the Chief Executive for comment.

Final reports

Comments received on the draft report will be considered for amendment of, or incorporation into, the final report.

The final report will be sent to the agency's Chief Executive, relevant Ministers, published on the Ombudsman's website, and tabled in Parliament. Note that the published version of the report will not include detail of our assessment of the agency's progress toward implementing action points from the 2015 *Not a Game of Hide and Seek* investigation. We committed to each agency at the time that the details of the 2015 investigation for each agency would not be made public.

In addition to individual reports, we will produce an 'omnibus' report which will outline general trends across all agencies. Because this will be a summary of the final opinions for each agency, a draft of this report will not be provided to the agencies as they will have already had chance to comment on our findings.

Evaluation

Following completion of his investigation, the Chief Ombudsman will conduct a review exercise as part of his Continuous Improvement programme. This will involve seeking the views of the agency's senior managers on their experience of this practice investigation, its value and relevance to their improving their work practices, and how future investigations may be improved when applied to other agencies.

Appendix 2. Key dimensions and indicators

Introduction

There are five key dimensions that have an impact on official information good practice in government agencies:

1.   Leadership and culture

2.   Organisation structure, staffing and capability

3.   Internal policies, procedures and resources

4.   Current practices

5.   Performance monitoring and learning

These dimensions are underpinned by a series of **indicators,** which describe the elements of good practice we would expect to see in order to evaluate whether each of the dimensions is being met.

These indicators are not exhaustive and do not preclude an agency demonstrating that good practice in a particular area is being met in other ways.

Leadership and culture

Achieving the purposes of the Act[54] largely depends on the attitudes and actions of leaders, including Ministers, chief executives, senior leaders and managers within the agency. Ministers, chief executives and senior managers should take the lead in promoting openness and transparency, and championing positive engagement with official information legislation.

Elements	Things to look for (indicators)
Ministers, chief executives, senior leaders and managers demonstrate a commitment to the agency meeting its obligations under the Act and actively foster a culture of openness within the agency	✓ Chief executives, leaders and the relevant Minister(s) actively and visibly work together to promote a culture of positive OIA compliance and good administrative practice ✓ Leaders make clear regular statements to staff and stakeholders in support of the principle and purposes of official information legislation, reminding staff of their obligations ✓ Leaders demonstrate clear knowledge and support of the Act's requirements ✓ Leaders encourage staff to identify areas for improvement and provide the means for suggesting and implementing them when appropriate ✓ Leaders make examples of good practice visible ✓ A visible and explicit statement exists about the agency's commitment to openness and transparency about its work

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[54] 'The Act' refers to the Official Information Act 1982

Elements	Things to look for (indicators)

Senior leadership have established an effective official information strategic framework which promotes an official information culture open to the release of information	✓ The agency has a strategic framework describing how it intends to achieve:
	  – Compliance with the Act
	  – Good practice
	  – A culture of openness and continuous improvement
	  – Participation and access to information by the public and stakeholder groups
	✓ Senior leadership takes an active role in the management of information
	✓ A senior manager has been assigned specific strategic responsibility and executive accountability for official information practices including proactive disclosure
	✓ Senior managers have accountabilities for compliance with the Act
	✓ Appropriate delegations exist for decision makers and they are trained on agency policies and procedures and the requirements of the Act
	✓ Senior leaders model an internal culture whereby all staff:
	  – Are encouraged to identify opportunities for improvement in official information practice (including increasing proactive disclosure) and these are endorsed and implemented
	  – Are trained to the appropriate level for their job on official information policies and procedures and understand the legal requirements
	  – Have compliance with the Act in their job descriptions, key performance indicators, and professional development plans
	✓ Senior leaders oversee the agency's practice and compliance with the Act, the effectiveness of is structures, resources, capacity and capability through regular reporting. Any issues identified that risk the agency's ability to comply with the Act are actively considered and addressed

Elements	Things to look for (indicators)

Senior leadership demonstrate a commitment to proactive disclosure, and public participation with clear links to the agency's strategic plans, thereby creating a public perception, and a genuine culture of openness	✓ Senior leaders are committed to an active programme of proactive disclosure and stakeholder engagement where the agency seeks and listens to the public's information needs through:
	  – Regular stakeholder meetings and surveys
	  – Reviewing and analysing requests and media logs
	  – Reviewing and analysing website searches
	✓ There is clear senior leadership commitment to the proactive release of information resulting in the agency publishing information about:
	  – The role and structure of the agency and the information it holds
	  – Strategy, planning and performance information
	  – Details of current or planned work programmes, including background papers, options, cabinet papers and consultation documents
	  – Internal rules and policies, including rules on decision-making
	  – Corporate information about expenditure, procurement activities, audit reports and performance
	  – Monitoring data and information on matters the agency is responsible for
	  – Information provided in response to official information requests
	  – Other information held by the agency in the public interest
	✓ The agency holds up to date information that is easily accessible (easy to find, caters for people requiring language assistance or who have hearing or speech or sight impairments) about:
	  – What official information it holds
	  – How it can be accessed or requested by the public and its stakeholders
	  – How to seek assistance
	  – What the agency's official information policies and procedures are (including charging)
	  – How to complain about a decision
	✓ The agency makes information available in different formats, including open file formats
	✓ The agency's position on copyright and re-use is clear
	✓ The public and stakeholders perceive the agency to be open and transparent

Organisation structure, staffing and capability

Responding to official information requests is a core function of the public sector. Therefore, it is expected agencies will organise their structure and resources to ensure they are able to meet their legal obligations under the Act considering each agency's size, responsibilities and the amount of information held.

Elements	Things to look for (indicators)

Agency has the capacity to discharge its official information obligations, with clear and fully functioning:
 	
• roles;
 	
• accountabilities;
 	
• reporting lines;
 	
• delegations; and
 	
• resilience arrangements.
	✓ An appropriate, flexible structure exists to manage official information requests which is well resourced reflecting the:
	  – Size of the agency
	  – Number of requests received (and from whom, public, media, other)
	  – Number or percentage of staff performing official information functions in the agency
	  – Percentage of time these staff are also required to undertake other functions
	  – Need to respond within statutory time limits
	  – Use of staff time, specialisations, structural resilience
	
	✓ Roles and responsibilities are clearly defined:
	  – Specific responsibility exists for coordinating, tracking and monitoring official information requests and agency decisions (and ombudsman decisions) and there is the authority and support to ensure compliance[55]
	  – Decision makers are sufficiently senior to take responsibility for the decisions made and are available when required, and if not, resilience arrangements exist.
	  – The official information function is located in an appropriate unit or area within the agency that facilitates effective working relationships with relevant business units (for example; media and legal teams)

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[55] This indicator is also relevant to performance monitoring and learning.

Elements	Things to look for (indicators)
Agency has the capability to discharge its official information obligations	✓ Training at all levels on the requirements of the Act is provided regularly and staff are expected to attend, and to apply the knowledge acquired ✓ Training is role specific with additional training for senior managers, decision makers and staff with official information responsibilities to support their work ✓ Expectations are set by senior leaders that regular refreshers are provided to all staff ✓ Training is provided on information management and record keeping that is role-specific and includes guidance on information retrieval as well as information storage ✓ The process for staff to assess and make decisions on official information requests is clear, understood, up to date and staff apply and document the process ✓ Agency staff, including front line staff and contractors, know what an official information request is and what to do with it ✓ User-friendly, accessible resources, guidance and 'go to' people are available ✓ Staff official information capability is regularly assessed and monitored through, for example, performance reviews and regular training needs analyses ✓ Official information obligations are included in induction material for all staff ✓ The agency's internal guidance resources are accessible to all staff

Internal policies, procedures and resources

Agencies should develop or adopt policies and procedures that will assist staff to consistently apply the requirements of the Act supported by good systems, tools and resources ensuring effective processing of requests consistent with the requirements of the Act.

Elements	Things to look for (indicators)

The agency has good official information policies, procedures and resources that are accurate and fit for purpose	✓ Good policies, procedures and resources exist for receipt and assessment of requests, which cover:
	   – What is official information
	   – Identifying the type of official information request received (Part 2, 3 or 4 of OIA) and distinguishing from Privacy Act requests
	   – Identifying the scope of the request
	   – Consulting with and assisting the requester
	   – Establishing the eligibility of a requester when necessary
	   – Logging requests for official information
	   – Acknowledging receipt of the request
	   – Correctly determining statutory time limits and tracking the handling of the requests
	   – Identifying who in the agency should respond to the request
	   – Establishing criteria for deciding whether, and if so, how a response to a request should be provided urgently
	   – Managing potential delays (including the reasons for them, the escalation process and invoking the extension provision)
	
	 ✓ Good policies, procedures and resources exist for information gathering on requests, which cover:
	   – Identifying the information within the scope of the request
	   – Searching, finding and collating the information at issue
	   – Documenting the search undertaken for the information within the scope of the request (including time taken if charging is likely)
	   – Transferring requests to other agencies or Minister(s) and advising the requester
	   – Consulting officials within the agency and third parties
	   – What to do if the information is held by a contractor covered by the Act by virtue of section 2(5) of the OIA
	   – Engaging with Ministers on official information requests
	
	 ✓ Good policies, procedures and resources exist for decision making on requests, which cover:
	   – Making a decision whether to release the information

Elements	Things to look for (indicators)
	– Making a decision on the format in which information is released – Making a decision whether to charge for the release of information – Guidance on application of withholding or refusal grounds relevant to requests made under Parts 2, 3 and 4 – Guidance on any statutory bars on disclosure relevant to the legislation the agency administers – Imposing conditions on release where appropriate – Advising the requester of the decision – Recording reasons for each item of information withheld, and the agency's consideration of the public interest in release where required ✓ Good policies, procedures and resources exist for releasing requests, which cover: – Providing the information in the form requested – Preparing information for release (including redactions) ✓ The agency has tools and resources for processing official information requests, such as templates, checklists, *'go-to'* people, effective tracking and monitoring systems, and redaction software and staff are trained on how to use them. ✓ The agency's official information policies, procedures and resources are regularly reviewed and up-to-date ✓ Staff find them useful and easy to access
The agency has appropriate record keeping and information management policies, procedures and resources	✓ Staff are able to identify, access and collate information that has been requested under the Act ✓ The agency has accurate and comprehensive records and information management policies, procedures and resources which enable information relevant to a request to be identified and collated ✓ The policies and procedures cover aspects such as: – Creating, organising, maintaining and storing records – Managing and modifying records – The security of information – A guide to determining which records systems exist and what information each holds – Retaining, retrieving and disposing of records – Both manual and electronic records, including personal e mail accounts, instant messaging and text messages

Elements	Things to look for (indicators)
	– Assigned responsibilities and performance criteria for records and information management by staff – The provision of secure audit trails – Annual/periodic audits of records ✓ These policies and procedures are regularly reviewed and up-to-date ✓ Staff find the policies and procedures useful and easy to access
The agency has accurate and comprehensive proactive release policies, procedures and resources	✓ The policies and procedures cover the release of such things as: – Information that has been released in response to official information requests – Information described in section 20 of the OIA about the agency and the information it holds – Information described in section 22 of the OIA about the agency's internal decision making rules, including its official information policies and procedures – Strategy, planning and performance information – Financial information relating to income and expenses, tendering, procurement and contracts – Information about work programmes and policy proposals – Information about public engagement processes, including public submissions – Minutes, agendas, and papers of advisory boards or committees – Information about regulatory or review activities carried out by agencies ✓ The policies and procedures include a process for identifying opportunities for proactive release, for example, where a high number of official information requests are received about a subject ✓ The policies and procedures include a process for preparing for proactive release, including managing risks around private or confidential information, commercially sensitive information and information subject to third party copyright ✓ The policies outline how and where the information should be made available for access, and if any charge should be fixed ✓ They are regularly reviewed and up-to-date ✓ Staff know about the agency's proactive release policies and procedures ✓ Staff find the policies useful and easy to access

Current practices

The effectiveness of the Act is largely dependent on those who implement it on a day to day basis and how they apply the resources available to them to manage the realities of giving effect to the Act.

Elements	Things to look for (indicators)
Official information practices demonstrate understanding, compliance, and commitment to the principle and requirements of the Act	✓ The agency complies with maximum statutory timeframes to transfer, extend, decide on requests, and release official information ✓ Requests are handled in accordance with the applicable law (Privacy Act, Part 2 OIA, section 22 OIA, section 23 OIA, Part 4 OIA) ✓ The agency makes appropriate use of the withholding grounds and administrative reasons for refusal ✓ The agency makes appropriate use of the mechanisms for dealing with large and complex official information requests ✓ The agency gives proper consideration to the public interest in release of official information, and explains this to requesters ✓ The agency interprets the scope of official information requests reasonably ✓ The agency consults with, and provides reasonable assistance to requesters ✓ The agency consults appropriately with third parties ✓ Ministerial involvement in agency official information decision making is appropriate ✓ The process for escalation of issues is used where necessary and is effective ✓ Official information is released in the form requested unless there is a good reason not to ✓ Consideration is given to releasing information in accessible formats ✓ There is evidence that agency practice aligns with its policies and procedures ✓ Staff regularly use the agency's policies and procedures

Elements	Things to look for (indicators)
The agency has good record keeping and information management practices	✓ The agency documents its handling of official information requests, including the steps taken to search for the requested information, the information identified as relevant to the request, and the reasons for its decisions ✓ The agency's records and information management practices facilitate official information compliance (it is generally easy to find information that has been requested under the Act) ✓ Staff regularly use the Agency's records and information management policies and procedures as described in 'The agency has appropriate record keeping and information management policies, procedures and resources' indicator under *Internal policies, procedures, and resources*
The agency has good proactive release practices	✓ The agency's entry in the *Directory of Official Information* is full, accurate and likely to assist requesters, and is linked from, or reproduced on, the agency's own website ✓ The agency publishes useful information online including the types of information described in the 'The agency has accurate and comprehensive proactive release policies, procedures and resources' indicator under *Internal policies, procedures, and resources* ✓ The agency publishes information in multiple formats, and applies open use standards ✓ The agency's position on copyright and re-use is clear ✓ Staff use the agency's proactive release policies and procedures where applicable

Performance monitoring and learning

Agencies should adopt performance monitoring and learning frameworks that enable them to learn and drive performance improvement and innovation.

Elements	Things to look for (indicators)
The agency has an established system for capturing and analysing data to inform meaningful and appropriate performance measures	✓ Performance measures include: – Quantity – for example the number of requests, from where and the number processed – Efficiency – for example duration of request handling, number of responses that exceed legislative maximum time limits, the reasons for any delays – Quality – for example outcome of any internal quality assurance reviews and/or external reviews of official information decisions and processes and whether or not the results of those reviews provide evidence of system wide issues – Monitoring of opportunities for proactive release – for example identifying common types of requests or a high number that indicates information that could be made available ✓ The agency collects data about its performance under the Act including such things as: – The number of requests – The type of request (Part 2, 3 or 4 of the Act) – The type of requester (for example; media, political researcher, corporation, individual citizen, Member of Parliament, interest group, etc.) – The information sought – The number and reason for transfers, and whether the transfer was made in time – The number, length and reason for extensions – The outcome of the request (granted in full, granted in part, refused in full, withdrawn or abandoned) – The number and amount of charges made and collected – The grounds on which information was withheld or the request refused – Whether the requester was consulted prior to any refusal under section 18(f) – Whether the Minister was consulted on the decision – Whether the decision was notified to the Minister – Whether, and which, third parties were consulted

Elements	Things to look for (indicators)
	– The time from receipt of the request to communication of the decision – The time from receipt of the request to release of the information – If the time limit (extended or not) was breached, the reasons for the delay – Whether the response was proactively published and if not, why – Whether the Ombudsman investigated or resolved a complaint about the request – The outcome of the Ombudsman's investigation or involvement – The outcome of any internal quality assurance reviews of processes or decisions – Staff time spent and costs incurred in processing official information requests, including the time spent assisting in processing requests by staff who are not in core OIA roles ✓ The agency analyses this data to determine whether it is complying with its relevant performance measures ✓ The agency monitors information demand (for example, through official information requests, website use, and other enquiries) to identify opportunities for proactive release ✓ The agency monitors any difficulties in identifying and collating information that has been requested
There is regular reporting about the agency's management and performance in respect of official information requests	✓ Data about the agency's official information performance, and information demand is regularly reported to senior leaders, and at least quarterly to the Chief Executive ✓ Reports include emerging themes or trends, opportunities for improvement and proactive release, resourcing, capacity or capability (training) issues ✓ Reporting informs planning, resourcing and capability building decisions

Elements	Things to look for (indicators)
The agency learns from data analysis and practice	✓ The agency has a system for sharing official information learning and experience, such as meetings, newsletters, email or intranet updates, or official information *'champions'* ✓ The agency monitors relevant data, guidance and publications, including those produced by the Ombudsman and Public Service Commission ✓ The agency monitors the outcome of Ombudsman investigations and reports these to relevant staff, including official information decision makers ✓ The agency analyses this information to determine where it has the potential to improve official information practice, stakeholder relations, or increase opportunities for public participation ✓ The agency periodically reviews its relevant systems, structures, and compliance with policies and procedures ✓ The agency actively participates in initiatives to share and discuss best practice externally, for example through forums, interest groups, networks and communities of practice

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