

# ***Official Information Act Guide***

*This guide will assist you when handling information requests  
subject to the Official Information Act 1982 (OIA).*

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## Information requests

As a government agency that is subject to the [Official Information Act 1982 \(OIA\)](#) and the [Privacy Act 2020](#), the Department of Corrections (Corrections) must comply with any requests for information made in accordance with this legislation. Information should be made available to a requester unless there is good reason to withhold it.

## Receiving information requests

People can make requests for information verbally or in writing. It is preferable that requests are made in writing so that misunderstandings don't arise.

If a verbal request is made, we may ask the requester to put it in writing if written clarification is reasonably necessary. If the requester declines or is unable to put the request in writing, then we should record our understanding of the request and provide a copy to the requester.

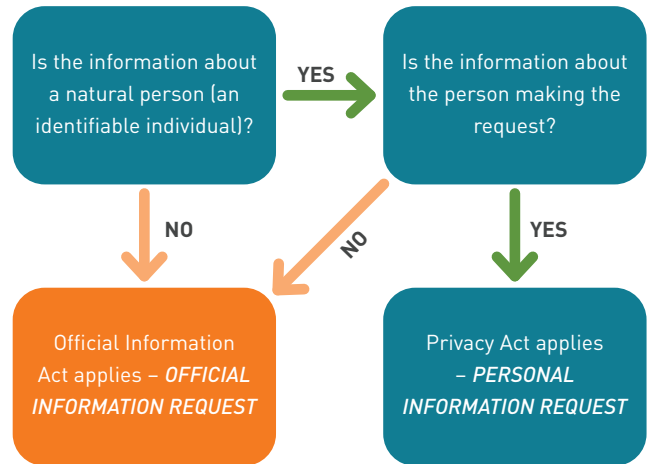
A requester doesn't need to advise Corrections of the reason for their request, nor do they need to specify that the request is made under legislation (e.g. the OIA or Privacy Act). We need to be proactive when identifying information requests.

### Which Act applies?

The OIA and the Privacy Act are the two pieces of legislation that govern most information requests. You first need to work out which Act applies:

- When a person asks for information about themselves, the Privacy Act applies. This includes requests from a person's authorised agent.
- In most other cases, the OIA applies. Apart from a few exceptions (as outlined in [section 2](#) and [section 52](#) of the OIA), any information held by Corrections is 'official information' and must be considered for release if requested.
- Official information includes:
  - Documents, reports, memoranda, letters, texts and emails.
  - Non-written information, such as digital, video or tape recordings.
  - Manuals which set out internal rules, principles, policies or guidelines for decision making.

- Information which is known to an agency but may not be written down.



### Example:

- John Jones, a person on a community-based sentence, has asked for a copy of his latest breach notice. This is a request under the Privacy Act.
- The neighbour of John Jones also seeks a copy of the breach notice, and does not have John's consent to act as his agent. This is a request under the OIA.

Occasionally, we receive requests that are covered by both the OIA and the Privacy Act. In such cases, Corrections' response needs to ensure each aspect is explicitly addressed separately.

### Example:

- Tom Thompson, a person held at Rimutaka Prison, has asked for a copy of an incident report about him kicking some prison equipment. He also asks for details of all records of damage to that equipment in the last six months. The first request about his incident report is a Privacy Act request, while the request for the details of damage to the equipment is an OIA request.

## Preparing a response

Once the relevant legislation has been determined, we need to prepare a response to the request.

## Official Information Act 1982 (OIA)

### Overview

The OIA is the New Zealand legislative framework that enables people (including people in prison or on community-based sentences and orders) to request and receive information held by government officials and bodies. Any information controlled by Corrections is considered to be “held” by Corrections. This means that information held by independent contractors to Corrections is also considered official information “held” by Corrections, for example, contracted rehabilitative or reintegrative services.

The key purposes of the OIA are to progressively increase the availability of official information to the people of New Zealand to:

- enable more effective public participation in the making and administration of laws and policies; and
- promote the accountability of Ministers and officials;
- and so enhance respect for the law and promote good government; and
- protect official information to the extent consistent with the public interest and the preservation of personal privacy.

### *Here are some examples of OIA requests at Corrections:*

- A researcher requests the current number of people in each prison, compared with 10 years ago
- A person in prison’s mother requests a copy of her son’s offender plan
- A lawyer requests information about eligibility criteria for a rehabilitation programme
- An external organisation requests a copy of Corrections’ Business Case for the construction of a new prison facility
- A victim requests the policy on reports prepared for the New Zealand Parole Board
- A person on a community-based sentence requests the staff guidelines for electronic monitoring
- An interest group requests information about expenditure on catering for staff Christmas parties
- A whānau member of a person who died at Invercargill Prison requests the Inspectorate’s death in custody report
- A journalist requests a copy of an event review into an abscond incident
- A Member of Parliament requests information about assaults in prisons
- A consultancy company requests information about psychometric tests used during Corrections’ hiring processes

**Note:** Information doesn’t need to be in Corrections’ physical possession for it to be considered as “held” by Corrections. For example, an education service contracted by Corrections will likely have information about people on community-based sentences at the Service Centre, as well as information about the programmes they deliver. Such information is official (and personal) information “held” by Corrections.

## Handling requests for official information

### Who can request official information?

Official information can be requested by any person who is:

- A New Zealand citizen
- A permanent resident of New Zealand
- A person who is in New Zealand
- A body corporate which is incorporated in New Zealand
- A body corporate which is incorporated outside New Zealand but which has a place of business in New Zealand ([section 12](#))

**Note:** Any person serving a community-based sentence or order, or any person in prison, is eligible to request official information under section 12 of the OIA, because they are located in New Zealand.

### Requests from corporate entities

A corporate entity can request personal information about itself, pursuant to part four of the OIA. A corporate entity may be a company, an incorporated society, or any other body recognised as such by statute.

Requests for personal information by a corporate entity allow for:

- a right of access to personal information ([section 24 of the OIA](#))
- restriction where a person is sentenced to imprisonment ([section 24A of the OIA](#))
- precautions in releasing certain information ([section 25 of the OIA](#))
- a correction of information the agency holds about the entity ([section 26 of the OIA](#))
- reasons for refusal of requests for personal information ([section 27 of the OIA](#)).

Further information regarding requests for personal information by corporate entities can be found on the Ombudsman's website [here](#).

### A duty to assist OIA requesters

Under the OIA, we have a duty to assist people making OIA requests. For example, if you think that a person's request is too vague to reasonably determine what information is being requested, then you have a duty to provide reasonable assistance to the person to clarify their request.

In accordance with [section 15\(1AA\) of the OIA](#), as long as Corrections asks the requester to refine their request within seven working days of receipt of the request, the amended or clarified request will replace the original request and the 20 working day time will reset on the day that the refined or clarified request is received.

While Corrections has a duty to assist people making OIA requests, in accordance with [section 12 of the OIA](#) a request for official information must be made with 'due particularity'. If a request is too difficult to interpret or doesn't make sense, you should contact the requester as soon as possible to advise that the request cannot be processed as it is currently framed.

### Right to request information and right to access personal information

Under [Part 2 of the OIA](#), people have the right to request information. Part 2 of the OIA relates to how people and entities may request official information (section 12). It also relates to agencies' obligations to: assist requesters (section 13), transfer requests (section 14), issue decisions on requests within specified timeframes (section 15) and grounds to extend requests (section 15A). It also outlines the form through which documents can be provided (section 16), deleting or altering information in documents (section 17) the administrative grounds to refuse requests (section 18) and providing reasons for refusal (section 19).

Under [Part 4 of the OIA](#), people have a right of access to personal information. That is, any information that is about the person making the request (or their representative) and which is held in such a way that it can readily be retrieved. This is an important distinction from information requested and considered as set out in Part 2 of the OIA. While Part 4 of the OIA relates to requests for personal information, requests for personal information are normally managed under the [Privacy Act 2020](#), not the OIA.

The Privacy Act also acts on the principle of availability and personal information may only be withheld from the requester in specified circumstances. More information about whether a request for information should be considered under the OIA or the Privacy Act is provided on pages 3-4.

### *Is a formal OIA response necessary?*

Corrections frequently receives information requests. Some requests can be handled instantly over the phone (e.g. someone querying prison visiting hours), while other requests require more effort from staff (e.g. a request for all information relating to alcohol and other drug interventions). Because there are so many different types of information requests at Corrections, the formalities associated with the way we respond to each information request may differ.

Determining whether a request requires a formal response under the OIA should be done on a case-by-case basis. The key considerations are:

- Whether the request requires managerial oversight
- Whether responding to the request requires a significant amount of staff time
- Whether some, or all, of the requested information may need to be withheld
- Whether some, or all, of the request may need to be refused.

If any of the above apply, then a formal OIA response should be prepared.

### *What does a formal OIA response look like?*

#### **Requests from people in prison or on community-based sentences or orders**

To formally respond to an OIA from a person Corrections manages, in most cases staff should use the 'Request for Information Form' (if within community corrections) or the 'C.010Form.02' (if within prisons). Using response templates available to staff on Tatou is also recommended for formal information requests, as the templates help us comply with legislation (see the 'Information Requests Tools and Templates' page on Tatou).

In cases where a request is complex or asks for information that cannot be managed by staff based at the prison or Community Corrections Service

Centre, staff should consider referring the request to Corrections' Ministerial Services team based at National Office, at [info@corrections.govt.nz](mailto:info@corrections.govt.nz).

#### **Example One:**

Jack asks his case manager at Rimutaka Prison, Sue, for information about the prison's self-care units. Jack said he'd looked for information on the unit kiosk but it didn't seem to be working. Before leaving the unit, Sue printed the relevant information off the unit computer and handed it over to Jack.

**Note:** Technically, Jack had made an OIA request. However, there was no need to formally respond to the information request, because the request required limited effort from staff and there was no reason to withhold any of the information requested (if the kiosk had been working, Jack could have located the information himself).

#### **Example Two:**

Jack had an upcoming parole hearing. It was Jack's second time appearing before the New Zealand Parole Board.

When Jack's case manager, Sue, met with Jack to discuss the upcoming hearing, Jack said that he didn't think he'd performed well in his last hearing – he'd been really nervous. Jack asked Sue if she could get him all the information relating to the alcohol and other drug programme he'd recently completed, as he wanted to properly prepare for the hearing. Sue felt that she'd need a few days to action Jack's request, as she'd need to talk to the relevant programme facilitator about collating the information and she suspected there might be quite a bit of printing involved. Jack agreed to submit his request on a C.05.Form.05 form to ensure no misunderstandings about the nature of his request. Sue then documented the request in IOMS, making a note of the timeframe for her response.

**Note:** In this case, Sue decided to formalise the information request because she felt that the request could take some time (e.g. she needed to consult with the relevant programme facilitator and print a number of documents). When deciding to formalise the request, Sue also took into account the important reason for Jack's request and urgency surrounding it, to assist with his upcoming parole hearing.

### Requests made by other people or received by non-frontline staff

Corrections staff working outside of prisons and Community Corrections Services Centres also frequently receive requests from a variety of stakeholders. For example, staff in a Housing and Support Services Team may receive an information request from a contracted provider, a SA-CEAR may receive an enquiry from a school principal, or a member of ELT may receive an information request from a union representative.

As above, determining whether a request requires a formal response under the OIA should be done on a case-by-case basis. If staff have concerns about releasing the information to the requester or believe information should be withheld, they should speak to their manager or consider referring the request to Ministerial Services at [info@corrections.govt.nz](mailto:info@corrections.govt.nz).

### What does an informal OIA response look like?

Even when an information request is dealt with informally, and regardless of whether it is answered by verbally, in an email or in a letter, it is still a request for information that must meet the obligations of the OIA, including meeting the legislated 20 working day timeframe to provide a response and providing reasons for any decision to the requester.

Regardless of whether an information request is managed formally, Corrections has a duty to provide assistance to the person requesting the information and should always adhere to the OIA's Principle of Availability: information shall be made available unless there is good reason for withholding it.

### How should I document OIA requests?

#### Requests from people in prison and on community-based sentences or orders:

When official information requests are made, we need to ensure the request is documented in either the 'Request for Information Form' (if within community corrections) or the 'C.10.Form.12' (if within prisons). It is important that you update the 'Further/Action Taken' sections and obtain the requester's signature to confirm the actions that have been taken (e.g. consultation, responses, issues, etc.). If the information request is subsequently investigated by the Office of the Ombudsman, your recorded actions will assist the investigation.

OIA requests made by people in prison or on community-based sentences also need to be documented in IOMS case notes under the following heading: 'Information Request – Official Information Act'.

#### IOMS case notes should specify:

- The date the request was received
- The information that has been requested
- The final date on which the requested information should be provided, or a decision on request should be issued
- Staff actions / next steps.

#### Why do we need to document our actions in two places?

- Recording your actions in the C.010.Form.02 (in prisons) and Request for Information Form (in Community Corrections) will provide evidence of the communication that has taken place between requesters and staff at Corrections – this is why it is important that requesters acknowledge staff actions by signing the relevant form.

**Note:** Written confirmation from external requesters is sufficient evidence of communication occurring (e.g. requests via email).

- In comparison, keeping records in IOMS case notes helps us track the information request timeframes and tasks (e.g. consultation with managers, peer review, searching for documents, etc.).

Community Corrections sites need to store all 'Request for Information Forms' in a shared folder on the G-drive. It is preferable that requests from people on community-based sentences are saved in one folder and requests from others are saved in another. Sites may be asked by National Office to report on the number of requests that have been received over a certain period.

IOMS C.10.Form.02 forms don't need to be saved in the G-drive. This is because they can be accessed directly on IOMS.

### Requests from other people:

Corrections receives OIA requests from a range of other stakeholders including, but not limited to: whanau of people in prison and on community-based sentences, members of the public, journalists, Members of Parliament and interest groups.

Prison staff can still process request from external parties, where practicable and appropriate. Refer to Prison Operations Manual section [C.10.01 Request from external parties for information](#) for more details.

When the request from an external party is complex and a formal response is required it can be referred to Corrections' Ministerial Services team based at National Office via [info@corrections.govt.nz](mailto:info@corrections.govt.nz). Requests for information from journalists should also be referred to Corrections' media team, at [media@corrections.govt.nz](mailto:media@corrections.govt.nz).

### Timeframes

The OIA stipulates a timeframe for our response within 20 working days of the request being received by Corrections. The first of the 20 working days is the day after it is received. A working day is defined in the OIA as excluding weekends, some statutory holidays and a period after Christmas.

The definition under the OIA is a working day means any day of the week other than:

- Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

Note that regional anniversary holidays are considered working days.

An electronic 'working day' calculator is available on the Ombudsman's [website](#). It is recommended that staff use the tool every time an OIA request is received.

Note: Address information requests as soon as you receive them – don't wait for day 20!

### Examples:

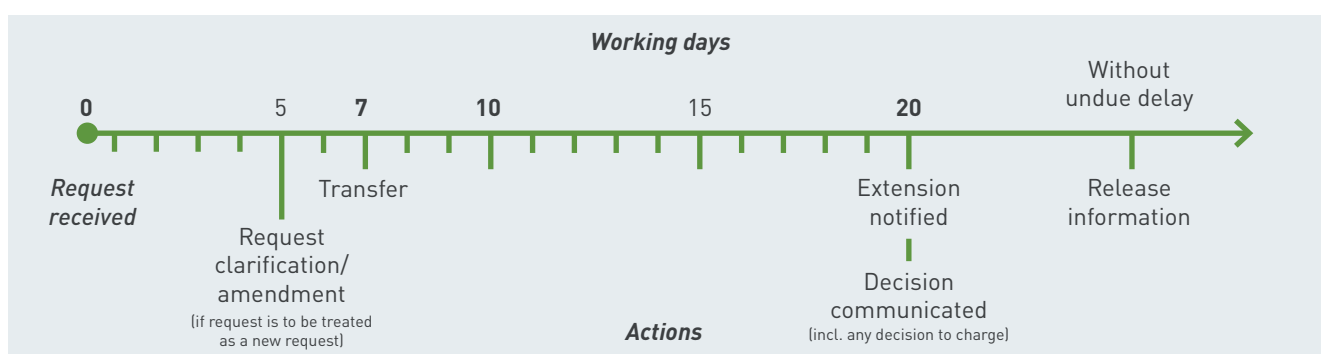
- A written OIA request is received by Corrections on Saturday, 5 June 2021. The first day of the 20 working days is Monday, 7 June 2021. A response must be sent as soon as practicable and no later than Monday, 5 July 2021.
- A verbal OIA request is received by Corrections on Thursday, 17 December 2020. The first day of the 20 working days is Thursday 17 December 2020. Because the days between 25 December and 15 January are excluded from the definition of working day, the response must be sent as soon as practicable and no later than Friday 5 February 2021.

If a request is unclear and requires consultation with the requester, Corrections has seven working days to seek amendment or clarification of the request in accordance with [section 15 of the OIA](#). It is very important for staff to start processing information requests as soon as they're received.

### OIA process and timeframes

A number of steps are involved in assessing a request for information within the 20 working day legislated timeframe, including: receipt, acknowledgement, scoping, collation, assessment, management, approval and release of the information requested.

Key timeframes for processing an OIA request are outlined in the below table.



Corrections' legal timeframe requirements for responding to requests for official information are to:

- make a decision and communicate it to the requester 'as soon as reasonably practicable' and no later than 20 working days after the request is received ([OIA section 15](#)); and
- make available any official information it has decided to release without 'undue delay' ([OIA section 28](#))

Where necessary in a particular case, additional timeframe requirements are to:

- request clarification of a request within 7 working days, if the amended request is to be treated as a new request ([OIA section 15\(1AA\)](#))
- transfer a request to another agency promptly, and no later than 10 working days, after the request is received; ([OIA Section 14](#))
- extend the maximum time limits to make a decision or transfer a request, within 20 working days after the day on which the request was received ([OIA Section 15A](#)).

The following timeline represents best practice for requests that involve a bit of work, while recognising that some very complex requests may take longer to process (requiring an extension under [section 14 of the OIA](#)). Other requests will be simple to process and won't require the full 20 working days. In many cases you will be able to respond to a request within a few days.

**Days 1-3:** request is received by the staff member or business unit. The person tasked with processing the request should be identified as soon as possible. They should acknowledge the request if that has not already happened and have a discussion with their manager if there are any concerns about the approach to answering the request.

**Days 2-10:** the staff member will gather the information requested, starting as soon as possible. This might involve searching outlook or G-Drive folders, other centralised document management systems, consulting colleagues or staff from other teams or Corrections sites. Identify if the request needs to be clarified or refined by the requester (within 7 working days). Identify whether any parts of the request should be transferred to external agencies under [section 14 of the OIA](#) (within 10 working days).

**Days 5-15:** staff member prepares response, discussing any concerns about information they think should not be released with manager. Staff member follows up with any other people involved in consultation process as needed. If required, the staff member may ask colleagues involved at the collation stage to review the response.

**Days 15-20 (or as soon as possible):** staff member discusses with their manager if they believe an extension is needed.

**No later than 20 working days:** response provided to requester.

### *Extensions of time*

In accordance with [section 15 of the OIA](#) we can extend the time for a response where there is a lot of material to collate and review or where we need to consult with other parties about the proposed release (for example to talk to New Zealand Police about a document that refers to an ongoing investigation).

A request cannot be extended again after the 20 working day timeframe, so it is important to start the work as soon as possible. That way we can accurately gauge how long an extension is required.

Extensions of time must be reasonable. If a request asks several questions and some parts of the request can be answered within the 20 working day timeframe, it is good practice to answer those parts and only extend the parts that require more time to answer.

The advice of an extension needs to include the following:

- The period of the extension
- The reason(s) for the extension
- The relevant OIA provision:
  - Section 15A(1)(a) of the OIA, where the request is for a large quantity of information; or
  - Section 15A(1)(b) of the OIA, where further consultations to make a decision on the request are required
- The fact that the requester can seek a review of the extension from the Office of the Ombudsman.

For an extension letter template, see the '[Information Requests Tools and Templates](#)' page on Tatou.

**Example:**

I refer to your request received on 12 June 2021, seeking information held by the Department of Corrections about the National Prison Menu. We are extending the timeframe for responding to your request under section 15A(1) of the OIA. This is because:

- you have requested a large quantity of information, and/or
- your request necessitates a search through a large quantity of information.

The extension is for a further 10 working days, and a response will be sent as soon as practicable and no later than 24 July 2021.

You have the right to ask the Ombudsman to investigate our decision to extend the timeframe. The contact details are Office of the Ombudsman, PO Box 10152, Wellington 6143

***Transferring OIA requests***

In accordance with [section 14 of the OIA](#), requests must be transferred to other agencies in the following situations:

- the information is not held by Corrections, but is thought to be held by another department or agency, or
- the information is more closely connected with the functions of another department or agency.

Transfers must occur promptly after receiving a request and no later than 10 working days after the day on which the request was received. If a decision to transfer the request has been made, then the staff member must inform the requester of the decision.

In some cases, all of a request will be transferred to another agency. In other cases, a request will be partially transferred (for example, a requester may ask five questions, two of which can be answered by Corrections, while three need to be referred to New Zealand Police).

**Example One:**

John Jones requests a copy of all information written about an incident that recently occurred in a Youth Justice Residence involving his younger brother. We note John's request and explain to him that it is more closely related to the functions of Oranga Tamariki as they, not Corrections, have oversight of Youth Justice Residences. As a consequence, his request will need to be transferred to them.

Corrections subsequently transfers the request to Oranga Tamariki in full within the 10 day timeframe. Corrections notifies the requester that their request has been transferred and they can expect a response from Oranga Tamariki.

For Oranga Tamariki, the 20 working day timeframe begins the day they receive the transferred request, not the day it was initially received by Corrections

**Example Two:**

A journalist submits a request with four parts to New Zealand Police, asking for:

1. The number of people charged with Distributing Objectional Material in 2021
2. The number of people in prison for a conviction for Distributing Objectional Material in 2021
3. The number of people serving a community-based sentence for a conviction for Distributing Objectional Material in 2021
4. The number of people who have a bail condition not to use the internet.

Police hold information about people charged with offences that they have not been convicted of yet (many of whom are not subject to any Corrections oversight). Police, not Corrections, are responsible for managing people on bail.

This means Police should answer parts One and Four of the request.

Police contact Corrections regarding parts Two and Three of the request, with the two agencies agreeing that these parts of the request, relating to people managed by Corrections, relate more closely to the functions of, and can be answered by, Corrections.

Corrections accepts a partial transfer of the request. Police notify the requester that their request has been partially transferred and that they can expect a response to the transferred parts of the request from Corrections.

For Corrections, the 20 working day timeframe begins the day we receive the partially transferred request, not the day it was initially received by Police.

### Considering the information request

The OIA operates on the principle of availability. [Section 5 of the OIA](#) describes this right as:

*The principle that the information shall be made available unless there is good reason for withholding it.*

The withholding provisions under the OIA are common-sense and save us from having to release inappropriate information. However, they should be applied on a case by case basis and only where good reason exists to refuse the information. Sometimes this will mean an entire document is not released, while in other cases it may involve the removal of some information contained within a document. Corrections should make any reasons for refusing to release information as clear as possible in its response to the requester.

As well as referring to specific OIA refusal grounds [outlined in full from Page 15] the response should, as far as practicable, explain the rationale and considerations such as the public interest test for refusing any documents or parts of documents. Where the same reason is being used to withhold multiple documents or parts of documents, a 'global' statement can be considered.

It is important to record details of how requests are considered and decisions made. For staff at processing OIA requests at Corrections' National Office, all consultation and preparatory material must be saved in CM9. As well as emails, records should be kept for any meetings or verbal consultation.

For staff processing OIA requests in prisons or Community Corrections sites, a centralised register is encouraged and consultation and preparatory material should be saved somewhere where it can be readily accessed by other staff if necessary (i.e., not within a staff member's personal email inbox).

Keeping full and accurate records of any consultation and preparation of an OIA requests is not only normal

prudent business practice, it is also a requirement under [section 17 of the Public Records Act 2005](#).

#### Example:

- We have withheld some information under section 6(d) of the OIA, as we consider the release of the information could endanger the safety of any person.

However, where different reasons are being used, we should take steps to make this clear to the requester.

#### Example:

- We have withheld some information from pages labelled 3, 7, and 9 under section 6(d) of the OIA, as we consider its release could endanger the safety of any person. Further, personal information of other individuals is withheld on pages 1 and 6 in accordance with section 9(2)(a) of the OIA, to protect the privacy of natural persons, including deceased natural persons.  
In accordance with section 9(1) of the OIA, we have also considered countervailing public interest relating to the release of the information, including *[describe examples of public interest considerations include transparency, participation, accountability, administration of justice, health, safety and environmental considerations. Ombudsman guidance on the public interest test is available on their website.*

### Requests for internal decision-making rules (section 22)

[Section 22 of the OIA](#) allows individuals and corporate entities to gain access to an agency's internal decision-making on a request. It reflects the principle that 'an individual has a right to know the law that does or may affect [them] personally'.

Section 22 provides a basis for people to understand and if necessary, challenge the decisions made about them. It also ensures that agencies can be held accountable for the decisions they make which affect people personally. Because there is a right of access, the reasons for refusing requests made under this section are more limited than the reasons for refusing ordinary OIA requests.

Further information relating to section 22 of the OIA can be found on the Ombudsman's website [here](#).

### *Requests for statements of reasons (section 23)*

[Section 23 of the OIA](#) allows people to request a written statement for the reasons a decision/recommendation was made in relation to them.

Because there is a right of access to personal information under part 4 of the OIA, the reasons for refusing requests made under this section are more limited than the reasons for refusing ordinary OIA requests. Section 23 requests differ from ordinary OIA requests as the section doesn't just enable access to information that is already held; it imposes a duty on agencies to create a statement of the reasons why a decision was made.

#### **Example:**

- A requester sought from the Crown Law Office, details concerning a decision on whether a particular prosecution should have been instituted. In order to ensure that he was provided with the fullest information, the requester specifically asked for the findings on all issues of fact, a reference to the information on which such findings were based and the reasons for the decision.

Further information relating to section 23 of the OIA can be found [here](#).

### *Considerations when treating a request with urgency*

A requester may ask that their request be treated as urgent and if so, give the reasons for seeking the information urgently.

When considering requests for urgency, you should:

- assess the requester's reasons for seeking urgency;
- as far as practicable, treat the request with urgency; and
- advise the requester of this decision and, if possible, provide an indicative timeframe for response.

If you require further clarification about a request for urgency, you should consider discussing the urgent request with the requester. This may allow for:

- clarity to determine the competing priorities that would need to be side-lined in order to treat the request with urgency;

- the requester to clarify the reasons for urgency, in light of these competing priorities; and
- the requester to clarify the intended scope of their request or to prioritise particular information, allowing decisions on certain information to be made sooner rather than later.

In cases where processing a request under urgency presents issues, requesters are more likely to be amenable to negotiating the scope of their request or timeframes if they are provided with an understanding of any competing work pressures or administrative difficulties. In these instances Corrections must also comply with its obligations under [section 16 of the OIA](#) to provide assistance to the requester.

#### **Example One:**

- A requester seeks information about ethnicity and gang affiliation demographics of people in prison, explaining that the information is required urgently for their university dissertation, due for submission in 12 days. The request can be completed with relative ease and Corrections provides the information requested 8 days after receiving the request. Corrections also provides weblinks to similar publicly available data that we consider will be of interest to the requester's research.

#### **Example Two:**

- A requester seeks information about any cases of use of force involving pepper spray in the last two years, sought for a court hearing in two weeks' time. An initial scoping exercise identifies that there are in excess of 500 pages of material within scope of the request, which would require consultation with various teams to prepare for release, with special consideration to redacting information that may identify the people involved, breaching their privacy ([OIA section 9\(2\)\(a\)](#)); or prejudice the maintenance of the law ([OIA section 6\(c\)](#)). Corrections explains these factors to the requester and asks whether the requester is agreeable to receiving three event reports that provide summarised findings and a memorandum to ELT that provides summarised data, all of which have previously been cleared for release. The requester accepts this option as the documents will provide the most relevant information to them and will enable the request to be met within the timeframe available.

Further information relating to urgent requests can be found on page 24 of the Ombudsman's OIA Guide for Agencies and Ministers, available the Ombudsman's website.

### ***Reactive requests and proactive releases***

Most of this guide applies to 'reactive requests', which are provided to requesters in response to a request for official information and which must be considered in accordance with the statutory timeframes for responding to requests under the OIA (and taking into account any request for an OIA to be treated with urgency).

However, information may also be considered for proactive release in accordance with the provisions of the OIA.

The proactive release of information promotes good government, openness and transparency and fosters public trust and confidence in agencies. It can also help reduce the administrative burden on individuals to make requests for information, and on agencies in responding to requests.

Proactive release of official information can be either:

- The publication of official information which Corrections believes to be of interest to the wider public - for example corporate information such as strategic intentions and Briefings to Incoming Ministers; or
- The publication of information that Corrections has previously provided in response to a request under the OIA.

Before information is proactively released our relevant considerations will include:

- The guidance set out in the Cabinet Manual and Cabinet Office Circular (18) 4. Only Ministers may approve the proactive release of Cabinet material;
- The requirements of the Privacy Act 2020;
- The Protective Security Requirements;
- any legal risk to Corrections.

Corrections may choose to make redactions to proactively published official information. These redactions will be identified with the related withholding provisions of the OIA.

At least once a quarter, Corrections' Ministerial Services team identify opportunities for proactive release through an assessment of OIAs answered by the Ministerial Services team.

The Internal Communications Team also regularly proactively release information on our website which is not subject to an OIA request but is identified to hold public interest.

In cases where Corrections considers the proactive release of information not subject to a request, Corrections will publish information that informs the public about how we undertake our functions, the role and structure of our agency, and the information we hold. We will consider for publication a range of other official information including but not limited to: policies, procedures, manuals and guidelines; strategy, planning and performance information; information about policy development; information about statutory decision making processes; and information about work programmes.

Corrections regularly reviews and updates published versions of policies if they undergo any amendments.

In cases where Corrections considers the proactive release of previous OIA responses, at least once a quarter Corrections' Ministerial Services Team will publish responses to OIA requests that are appropriate for wider publication.

When deciding whether to proactively publish a response to an OIA request, relevant considerations include:

- whether there has been more than one request for the information, or on the topic the information covers;
- whether the information would be of general interest to the public.

Corrections' Ministerial Services Team advises requesters of official information that our response to them may be published on our website. Before publication, the team remove any personal details that would reveal the identity of the requester.

Corrections also assesses any risks around personal or confidential information, continually assess the frequency and timing of publication and release information in the most useable form.

## Refusing official information

The OIA operates on a principle of availability: information shall be made available unless there is a good reason to refuse it. Nonetheless, any information that has been requested and is proposed for release needs to be carefully reviewed to assess whether any circumstances exist that merit refusing the information requested. The OIA refusal provisions are considered on a case-by-case basis. There are no blanket policies for withholding classes of information.

The table below shows all OIA refusal provisions. The grounds more likely to be used by Corrections are shaded in **blue**. Grounds rarely used by Corrections are shaded in **green**.

If a decision is made to withhold information, you can refer to the 'Information Requests Tools and Templates'

page on Tatou to access the relevant response letter template.

**Note:** If you read through the relevant considerations and you're still unsure about whether a refusal ground applies, talk to your manager in the first instance or contact the Ministerial Services team via [info@corrections.govt.nz](mailto:info@corrections.govt.nz).

**Note:** the Ombudsman has published various guidance documents to address which address each refusal provision of the OIA. Before deciding to engage any of the grounds listed in the table below, you are encouraged to first refer to this guidance, available here: <https://www.ombudsman.parliament.nz/resources>

Where available, links to guides published by the Office of the Ombudsman for specific sections of the OIA are also provided within the tables below.

## Section 6: Conclusive reasons

[Section 6 of the OIA](#) sets out conclusive reasons to refuse official information, which are not subject to a public interest test.

Conclusive reasons to refuse official information	Legislation	Guidance (where available)
Prejudice New Zealand's defence, security or international relations.	Section 6 (a)	<a href="#">Conclusive reasons for refusing requests: A guide to the conclusive withholding grounds in section 6 of the OIA</a>
Prejudice any international government or organisations entrusting information to the government on a basis of confidence.	Section 6 (b)	
Prejudice the maintenance of the law (including the prevention, investigation, and detection of offences and the right to a fair trial).	Section 6 (c)	
Endanger the safety of any person.	Section 6 (d)	
Seriously damage the economy by prematurely disclosing decisions to change or continue with Government economic or financial policies.	Section 6 (e)	

## Section 7: Special reasons

Special reasons to refuse official information	Legislation
Likely to prejudice the security or defence of the Cook Islands, Tokelau, Niue or the Ross Dependency	Section 7 (a)
Likely to prejudice relations between any of the Governments of New Zealand, the Cook Islands and Niue.	Section 7 (b)
Likely to prejudice the international relations of the Cook Islands or Niue.	Section 7 (c)

## Section 9: Good reasons

[Section 9 of the OIA](#) set out good reasons to refuse official information, which must be weighed against any other considerations which may render it desirable in the public interest to release the information. Corrections must be able to demonstrate that the public interest has been considered.

Other reasons to refuse official information	Legislation	Guidance (where available)
Protect the privacy of natural persons (including the privacy of a deceased person).	Section 9 (2)(a)	<a href="#">Privacy: A guide to section 9(2)(a) of the OIA</a>
Protect information where the making available of the information would disclose a trade secret or would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.	Section 9 (2)(b)	<a href="#">Commercial information: A guide to sections 9(2)(b) and 9(2)(i) of the OIA</a>
Protect information which is subject to an obligation of confidence or which any person is compellable to provide, where the making available of the information would be likely to prejudice the supply of similar information or information from a similar source and it is in the public interest that such information should continue to be supplied, or it would be likely otherwise to damage the public interest.	Section 9 (2)(ba)	<a href="#">Confidentiality: A guide to section 9(2)(ba) of the OIA</a>
Avoid prejudice to measures protecting the health or safety of members of the public.	Section 9 (2) (c)	
Avoid prejudice to the substantial economic interests of New Zealand.	Section 9 (2) (d)	
Avoid prejudice to measures that prevent or mitigate material loss to members of the public.	Section 9 (2) (e)	
Maintain the constitutional conventions which protect confidentiality of communications by or with the Sovereign or her representative, collective and individual ministerial responsibility, the political neutrality of officials, and the confidentiality of advice tendered by Ministers and officials.	Section 9 (2) (f)	<a href="#">Constitutional conventions: A guide to sections 9(2)(f)(i)-(iii) of the OIA</a> <a href="#">Confidential advice to government: A guide to section 9(2)(f)(iv) of the OIA</a>
Maintain the effective conduct of public affairs through the free and frank expression of opinions by, between, or to, Ministers, officers and employees of a Department or members of an organisation, in the course of their duty, or through protection of any of them from improper pressure or harassment.	Section 9 (2) (g)	<a href="#">Free and frank opinions: A guide to section 9(2)(g)(i) of the OIA</a> <a href="#">Improper pressure or harassment: A guide to section 9(2)(g)(ii) of the OIA</a>

Maintain legal professional privilege.	Section 9 (2) (h)	<a href="#">Legal professional privilege: A guide to section 9(2)(h) of the OIA</a>
Enable a Minister or Department to carry out commercial activities.	Section 9 (2) (l)	<a href="#">Commercial information: A guide to sections 9(2)(b) and 9(2)(i) of the OIA</a>
Enable a Minister or Department to carry out negotiations without prejudice or disadvantage.	Section 9 (2) (j)	<a href="#">Negotiations: A guide to section 9(2)(j) of the OIA</a>
Prevent disclosure or use of information for improper gain.	Section 9 (2) (k)	<a href="#">Improper gain or advantage: A guide to section 9(2)(k) of the OIA</a>

### Section 18: refusal of requests

[Section 18 of the OIA](#) sets out the administrative reasons requests for official information may be refused:

Reason to refuse a request for official information	Legislation	Guidance (where available)
Good reason (conclusive, special, or other) to withhold the information exists	Section 18 (a)	
The reason in section 10 require a response that neither confirms nor denies that the information exists.	Section 18 (b)	
The release is contrary to another Act or could constitute contempt of court or the House of Representatives.	Section 18 (c)	<a href="#">Contrary to law and contempt of court or the House: A guide to section 18(c) of the OIA</a>
The information is, or will soon be, publicly available.	Section 18 (d)	<a href="#">Publicly available information: A guide to section 18(d) of the OIA</a>
The information could be, or has been, sought by a defendant (or person acting for a defendant) under the Criminal Disclosure Act 2008.	Section 18 (da)	
The information does not exist or is not held by the Department.	Section 18 (e)	<a href="#">Information not held: A guide to sections 18(e) and (g) of the OIA</a>
The information requires substantial collation or research.	Section 18 (f)	<a href="#">Substantial collation or research: A guide to section 18(f) of the OIA</a>
The information is not held by the Department and is held by another department or connected closely with the functions of another department.	Section 18(g)	<a href="#">Information not held: A guide to sections 18(e) and (g) of the OIA</a>
The information is trivial, or the request is frivolous or vexatious.	Section 18 (h)	<a href="#">Frivolous, vexatious and trivial: A guide to section 18(h) of the OIA</a>

The following pages provide further guidance on the OIA refusal grounds commonly used by Corrections.

### ***Privacy considerations – Section 9(2)(a)***

There will be occasions where requested information contains information about people other than the requester.

#### **Examples:**

- An incident report about a riot in a prison containing the names of staff and people in prison
- Comments in a parole report about the neighbours of a person who has been released on parole.

Corrections needs to ensure that it does not release personal details of people other than the requester (which are protected under section 9(2)(a) of the OIA), unless there is an overriding public interest in the information being released (as per section 9(1) of the OIA). Each case must be considered on its own merits. The age of the documents, the requester's relationship to the subject of the information and other contextual factors may be considered.

Sometimes public interest considerations outweigh privacy considerations.

#### **Example One:**

- A requester is writing a biography on a person who escaped from prison in the 1980s. Corrections is aware that the subject of the information died several years ago and so a privacy waiver cannot be obtained. Privacy considerations still apply to this person's personal information under section 9(2)(a), which protects the privacy of natural persons, including deceased natural persons.
- However, there is public interest in the release of incident reports relating to the escape, which was a well-known incident that has received continued media attention and triggered policy reforms.
- Corrections decides that public interest considerations under section 9(1) of the OIA outweigh privacy considerations in this instance and releases the reports with a small amount of information relating to third parties withheld.

#### **Example Two:**

- A journalist requests information about the recent release of a high-risk offender into the community close to schools and parks, which resulted in community opposition and the individual ultimately being moved to another area. Corrections has previously acknowledged that the placement should not have occurred, and we have conducted a review.
- The documents in scope of the request contain the individual's personal information, protected under section 9(2)(a) of the OIA.
- Corrections determines there is significant public interest in the reports, which include a practice review that resulted in a number of recommendations about Community Corrections practice. It is important to show the public that Corrections is accountable has implemented practice changes as a result of this case.
- Corrections decides to release the reports - releasing some, but not all, of the offender's information that would ordinarily be withheld. This includes information about the conditions of their sentence, wraparound support from other agencies and considerations surrounding their release. We decide to refuse information relating to their new address, specific details of their sentence management and any information that may identify the victims of their offending or support people.

Corrections often withholds names and identifying aspects relating to other individuals, including staff members in some circumstances, as it is considered necessary to protect the other individuals' privacy (section 9(2)(a) of the OIA). Besides withholding the other people's names, Corrections can also withhold any words that could allow the third party requester to identify the individual, including phrases such as 'neighbour', 'cell-mate', 'brother' or 'former- partner'. It also means we can withhold addresses, phone numbers, and any identifying information.

However, if the requester is aware of the other individual there are unlikely to be any grounds to remove that name. Where the name is well known to the requester, the further release may not meet the definition described in the OIA (i.e. a breach of the individual's privacy).

**Examples:**

- The name of the Principal Corrections Officer (PCO) who wrote an incident report is released, because it is well-known to the requester that the PCO wrote the report
- The name of a person on a community-based sentence's probation officer is released, because the requesting organisation had been liaising with the probation officer about the request.

**Note:** When requests are made for information that is personal to an individual other than the requester, the request may still proceed if the person who the information relates hasn't any concerns about the release. For example, the mother of a person in prison may request their child's management plans and parole reports, so long as their child consents. In such cases, there is no need to refuse all the information on privacy grounds – only personal information that relates to other people may need to be withheld.

**Note:** Before using section 9(2)(a) in relation to information that identifies or is about Corrections staff, Consider whether section 9(2)(g)(iii), improper pressure or harassment, is more appropriate, or whether the information is 'out of scope' of the request.

**Privacy examples:**

- A person in prison's mother requests the notes from her son's recent restorative justice conference (the notes had been written by the probation officer). There were seven people at the conference, including the person in prison, his victim, two members of the victim's family, the conference facilitator, the person in prison's lawyer, a police officer and the person in prison's probation officer.
- The probation officer asks the person in prison whether he consents to his mother having a copy of the notes – he says it's okay. The probation officer then contacts everyone involved in the conference and asks whether they mind if the information about them is disclosed. The victim and the two family members said they'd prefer that the person in prison didn't have a record of what they'd said at the conference, however, everyone else said that they didn't mind the information about them being released.

The probation officer removes all the names and comments made by the victim and the two family members. To further protect the privacy of the victim and family members, the probation officer also removes some comments made by others at the conference, about things said by the victim and the family members.

In this case, there was no public interest in releasing the personal information of the individuals concerned.

**Note:** *Under the Victims Rights Act 2002 we also have a duty to protect victims' dignity and privacy (as was done in this case).*

- A person is serving nine months of Home Detention. A potential employer requests a copy of all the individual's IOMS offender notes. The person consents to the release of the information, as it could help him secure a job.

Some of the notes contain information about the person's mother and her wish that her son doesn't serve his sentence at her house. The probation officer talks to the person's mother about the request. The mother says she'd prefer that her son didn't see the information about her, as it was information that would be upsetting to her son.

The probation officer removed the person's mother's name and comments before releasing the information.

**Here are some examples of information considered to be 'personal':**

- A person's home address
- The age of a person
- A person's salary
- The name of a person's relative
- The marital status of a person
- Information about a person's job performance
- A person's medical records or issues
- Psychological information about a person
- A person's religion
- A deceased person's prison records.

### ***Maintenance of the law considerations – Section 6(c)***

At Corrections, this ground often arises when information is requested about cases that haven't yet been given a verdict or are being appealed. Any information that could affect the fair trial of any person should be withheld.

Staff also need to be cautious of information requests that may affect Police investigations. For example, information requests about people in prison who have outstanding charges, or are appealing their cases, or have just been involved in an incident that could lead to fresh charges being laid.

In these types of cases, if a requester is a defendant requesting information about ongoing criminal proceedings, their access to information should be managed within the provisions of the Criminal Disclosure Act 2008, rather than the OIA or Privacy Act. In these cases, the requester should contact the Police Officer in charge of the case for further information.

The maintenance of the law ground also applies to information that could affect the safety and security of prisons if released. Examples are confidential policies or intelligence gathering practices.

#### **Maintenance of the law examples:**

- A person on remand requests the 'summary of facts' from a case unrelated to himself – the case relates to a fellow person on remand who has, so far, completed two days of a two-week trial. The Principal Corrections Officer withholds all requested information on 'maintenance of the law' grounds, considering the trial is still underway.
- An incident occurs in prison involving three people in prison, one of whom is seriously injured. The Police have been notified about the incident but have yet to start their investigation.
- A person in prison who was uninvolved in the incident requests a copy of the incident report. The unit Principal Corrections Officer withholds the report on 'maintenance of the law' grounds, because the report will be used as evidence in the upcoming trial for the two men charged as a result of the incident.

- A person in prison requests details of the prison's cell phone blocking technology. The request is declined on 'maintenance of the law' grounds, because the release of the information could compromise the security of the prison.

#### **Here are some examples of information that, if released, could prejudice the 'maintenance of the law':**

- Court evidence in an unfinished court case, including appeals (e.g. security footage, IOMS offender notes, a community probation breach notice, the summary of facts, a remandee's criminal history, etc.)
- Information relevant to a police investigation (e.g. contraband evidence, intel. records, witness statements, etc.)
- A prison incident report or IOMS offender notes, which detail events that will lead to police prosecuting individual(s)
- Information that could influence future criminal activity (e.g. staff tactical options / responses, victim information, risk assessment manuals / methodology, security information, etc.).

### ***Safety considerations – Section 6(d)***

Staff names and identifying details can also be withheld for safety reasons where there are concerns about the safety of the individual staff member. As noted in the table of common refusal provisions under the OIA, section 6(d) of the OIA allows Corrections to refuse information where disclosing it would be likely to endanger the safety of any individual. This ground requires that there is a real or substantial risk to an individual's life or physical safety – i.e. the risk could well occur.

Persuasive circumstances when considering whether a person may be endangered by the information being released could potentially include information falling into the hands of a person with a history of violent behaviour. Other persuasive circumstances for refusing information on safety grounds are when threats have been received, or there is evidence of outside gang members negatively responding to the actions of Corrections staff members.

It can be difficult to prove that a person is likely to be endangered by the release of information (e.g. you must have evidence). However, a person's safety may be protected by simply removing the endangered person's personal information (e.g. staff names, roles, comments or views). Staff should, therefore, first identify what personal information should be removed from the requested information and then ask the question: do I have any evidence indicating that a person would still be endangered by the release of this information? If the answer is "yes", you may be able to refuse additional information on safety grounds.

Before deciding that the release of information meets the threshold for refusal under section 6(d) of the OIA, you should consider whether other OIA grounds, including section 9(2)(a) (personal information), section 9(2)(g)(i) (free and frank expression of opinion) or section 9(2)(g)(ii) (improper pressure or harassment) are more applicable to the disclosure of the information at hand.

#### **Safety example:**

- John Jones, who is held at Spring Hill Corrections Facility, requests all documentation from a recent Right Track meeting that was held for the purposes of talking about another person in prison, Bill Jones' behavioural problems – Bill was disrupting the unit. The outcome of the meeting was a decision to move Bill to a maximum security unit in Auckland. Five staff members had freely discussed their views on Bill's behaviour and the necessity of a move.

When John found out about the decision to move Bill, he told a Corrections Officer that the people who made the decision "better watch out" cause his people would be "dealing to them". John was the leader of a local gang and was also the brother of Bill.

All information from the Right Track meeting was recorded in Bill's IOMS offender notes (e.g. Bill's personal information).

The Senior Corrections Officer handling the information contacts Bill's new case manager in Auckland to see whether Bill would consent to the notes being released to John. Bill consents to the information being released to his brother.

The Senior Corrections Officer then asks the staff involved in the Right Track meeting whether they were okay with the notes being released. All the staff involved said that they'd like their identities concealed, so Bill wouldn't know who had made the decisions.

John had numerous violent offences in his criminal history and there was also evidence of John stalking staff in the past.

After discussing the case with his Principal Corrections Officer, it was decided that all staff names and identifying information should be withheld under section 6(d) of the OIA, as the release of the information would likely endanger the safety of the staff involved.

Note: Other refusal grounds that could be considered in this case are 'privacy' and the 'free and frank expression of opinion'. However, in this case, it was decided that information needed to be withheld on safety grounds, so there was no need to use any other refusal grounds.

#### **Here are some examples of when information could endanger a person:**

- Information that if released, puts a person's life or physical safety at risk
- Information associated with death threats
- Information that could provoke a person who has a history of violent behaviour (e.g. it significantly increases their risk factors)
- Information that is similar to a previous information release that jeopardised the physical safety of a person
- Information that could lead to a person being stalked.

### *Free and frank expression of opinion considerations – Section 9(2)(g)(i)*

If the release of requested information inhibits free and frank expression of opinions necessary for the effective conduct of public affairs (e.g. the functions of Corrections), then the information should be withheld unless there is an overriding public interest in release (section 9(2)(g)(i)). This refusal ground highlights the importance of expressing opinions when providing advice to people, communicating the significance of an issue or making decisions about work matters.

For Corrections, this refusal ground is used when information is requested about the development of new Corrections policies (e.g. staff views / opinions voiced during the development of a new policy).

On occasion, this ground may need to be used by prison or community corrections staff when considering information for release (e.g. staff opinions on the management of people in prison or the security of the prison). A good test when determining whether this ground applies is to ask how the release of the information could prevent staff from expressing their opinions on such issues in the future – if you think it would, then you can consider withholding it under these grounds.

Before deciding that the release of information meets the threshold for refusal under section 9(2)(g)(i) of the OIA, you should consider whether other OIA grounds, including section 9(2)(a) (personal information), section 9(2)(g)(ii) (improper pressure or harassment) or section 9(2)(ba)(i) (information provided in confidence) are more applicable to the disclosure of the information at hand.

In accordance with section 9(1) of the OIA you must also consider whether public interest outweighs the reason for refusal, in line with the OIA's principle of availability.

**Note:** The seniority of a staff member is a relevant consideration when determining whether information needs to be withheld on free and frank expression of opinion grounds. For instance, the opinions of senior staff are less likely to be withheld, because senior staff are expected to express their opinions on issues, even if there's a possibility that their opinions will be made public in the future.

### **Free and frank expression of opinion – an example:**

- Staff from National Office facilitated a workshop at Rimutaka Prison to talk about proposed changes to the Release to Work programme. A number of staff involved in the workshop had some strong views about what should and shouldn't be changed about the Release to Work programme.

After the workshop, staff opinions were summarised by National Office staff and disseminated to all staff who attended the workshop.

A person in prison heard about the workshop and requested all documentation relating to the workshop.

After discussing the request with National Office staff, it was agreed that staff opinions should be withheld under section 9(2)(g)(i) of the OIA, as the release would inhibit the free and frank expression of opinions of staff. In this case, staff would have been reluctant to voice their opinions on such issues in the future, if the entire summary were released to the person in prison.

Corrections decides that public interest considerations under section 9(1) of the OIA do not outweigh section 9(2)(g)(i) considerations in this instance

### **Here are some examples of information that, if released, could inhibit 'free and frank expression of opinion':**

- Staff opinions on the development of new prison policies (e.g. changes to the prisoner placement policy, the privatisation of a prison, changes in the Prison Operations Manual or practice centres, etc.)
- Staff opinions freely expressed at team meetings (e.g. the security / safety of the prison, workload issues, funding, training demands, etc.)
- Advice exchanged between two employees
- Group discussions had at workshops / focus groups / team building exercises.

### ***Commercial interest considerations – 9(2)(b) or 9(2)(i)***

Corrections holds some information that, if released, could negatively affect a business or an individual's earning capacity or ability to carry out commercial activities in future. For instance, information that a business competitor could use to gain an advantage over a competing company is considered commercially sensitive information.

Similarly, information that could enhance a company's tender for a contract is considered to be commercially sensitive – this is because the release of the information would negatively affect other companies who place tenders for the contract.

Corrections also holds information that could harm its own commercial activities or reputation if released. Examples may include payments made to third parties or contractually confidential information.

Different refusal grounds apply to information that could harm the commercial position of the person who is subject to the information (section 9(2)(b) of the OIA), and information that could harm a Government department such as Corrections' commercial position (section 9(2)(i)).

As a rule, requested information that contains details of money paid (or earned), should be checked for commercially sensitive material.

#### **Example:**

- A member of the public seeks a copy of an account for electrical work done at a prison. The name of the company is included in the document (ABC Electrical Limited), as well as the amount paid (\$625.00 / GST excluded).

Corrections consults the company, who does not wish for their hourly rate to be published, this could result in other contractors under-cutting their business (they might also be hesitant to take contracts from Corrections again) redacts the hours worked and the company's hourly rate from the document under section 9(2)(b) of the OIA. However, the administrator leaves the name of the company and the amount Corrections paid for the work.

Corrections decides that public interest considerations under section 9(1) of the OIA do not outweigh the reasons favouring refusal in this instance.

#### **Example:**

- A requester asks for a copy of Corrections' contract with an electronic monitoring provider. Some sections of the contract can be released, while others are subject to confidentiality clauses. Corrections' contract with the electronic monitoring provider is due to be renegotiated soon. The release of the confidential sections of the contract would impact Corrections' relationship with the provider and impair our ability to engage their services in good faith in future. The contract is partially withheld under section 9(2)(i) of the OIA.

Corrections decides that public interest considerations under section 9(1) of the OIA do not outweigh the reasons favouring refusal in this instance.

### ***Considerations when information doesn't exist or can't be found – Sections 18(e) and 18(g)***

If requested documents don't exist or can't be found (OIA section 18(e)), before refusing the request, we need to consider whether consulting with the requester would assist them to make the request (section 18B of the OIA). For example, the requester may be able to provide information that assists with locating the information, or they may be happy to receive information similar in nature to what was requested, but not the exact information requested.

Section 18(g) of the OIA applies to 'information' that is not held. Unlike section 18(e) of the OIA there is no requirement when using the section 18(g) refusal ground for Corrections to consider whether consulting with the requester would assist them to make the request. It is most commonly applied to data that is not collected by Corrections.

**Note:** Questions which require Corrections to form an opinion or provide an explanation and so create new information to answer the request are not a request for 'official information'. If you would have to create new information to answer a request, it may be refused under section 18(g).

**Here are some examples of when documents don't exist or can't be found (section 18(e)), or information is that is not held by Corrections and is not believed to be held by another agency (section 18(g)):**

- File information destroyed by an earthquake
- Electronic information that's been deleted and is irretrievable
- Historical information that has been lost over time
- Information that nobody but the requester knows about
- Information that can't be located after a reasonable search of all relevant files (both electronic and physical)
- Security footage that has been deleted after a certain period of time
- Knowledge in a person's mind that has since been forgotten (e.g. a significant period of time has passed by)
- Knowledge in a person's mind and the person who holds the knowledge no longer works for Corrections.

### ***Substantial collation or research considerations***

Before deciding to refuse information on grounds of substantial collation or research (section 18(f) of the OIA), staff must consider whether either (or both) of the following may enable the request:

- Fixing a charge for the information (section 18A(1)(a) of the OIA), or
- Extending the time limit (section 18A(1)(b) of the OIA).

If neither option enables the request, before refusing the request, as with section 18(e) of the OIA, you need to consider whether consulting with the requester would assist them to make the request in a manageable form (section 18B of the OIA).

**Note:** When refusing requests on grounds of substantial collation or research, multiple requests from one person on a similar subject over a short period of time may be addressed as one request (section 18A(2) of the OIA).

### **Substantial collation or research – an example:**

- A person in prison requested all information relating to prison rehabilitation programmes. Staff felt that the request was too broad in scope to respond to – neither a charge, nor a time extension would be enough to ease the pressure on staff to respond to such a large request.

The person's case manager went and consulted with the person about the request, explaining to them that the request was such a large request that they were contemplating declining the request under section 18(f) of the OIA. The case manager asked the person if there was a particular rehabilitation programme that they'd like to learn more about. The person explained that his partner thought that the rehabilitation programmes at Corrections didn't work. His partner was visiting the following week, and he wanted to provide her with some information about the alcohol and drug programme he'd completed the previous year.

The case manager asked if the person would be happy to amend his request to only include information on the particular programme he'd completed – he agreed.

### **Here are some examples of information requests that require substantial collation or research:**

- A researcher requests all documentation held by Corrections relating to offender rehabilitation and reintegration
- An employment advocate requests all staff guidelines that have ever existed for Corrections staff
- A member of the public requests a list of all services ever contracted by Corrections
- A person in prison requests all research / literature that informs all Corrections' risk assessments
- A person serving community work requests a list of every place in New Zealand where community work has been undertaken.

### ***Public interest considerations – OIA Section 9(1)***

The Office of the Ombudsman has published guidance at [Public interest: A guide to the public interest test](#).

Under the OIA, section 9 refusal grounds need to be weighed against public interest. This means that even if a section 9 ground applies, the information may still need to be released (e.g. if it is in the public interest to do so). A full list of the good reasons for refusal under section 9 of the which are subject to the public interest test are provided on page 16.

Public interest should be determined on a case-by-case basis. An example of information being released due to public interest is the release of a person's personal information, in order to prevent endangering a person's physical safety. In such cases, upholding an individual's right to privacy is outweighed by the public's interest in finding out that a person is in danger.

At Corrections, public interest considerations are most commonly considered when personal information is being withheld (e.g. under section 9(2)(a) of the OIA). If we are refusing personal information, we need to ask ourselves whether it is in the public's interest to release the information, despite it being personal to an individual.

**Note:** If you think that information should be released due to public interest, then check with the Ministerial Services team, Privacy Team or another appropriate manager – it's important that you get a second opinion.

***The following pages provide further guidance on other considerations when processing and responding to an OIA request.***

### ***Out of scope material***

Some information that is included in a document requested under the OIA may be unrelated to what the requester has asked for and therefore, serves no purpose in being released. In this scenario, it is best to exclude information from the document and label it as 'Outside of scope'.

It is important to note that this is not a withholding ground, we are just excluding information as it does not fall within the scope of the information requested.

It is also important to note this in the letter as it can be confusing to requestors and may imply that Corrections is withholding information. The following line should be included in the response if the Outside of scope terminology is used:

*Some information is excluded from the documents enclosed as it is out of scope of your request.*

### ***Charging a requester***

The Office of the Ombudsman has published [Charging: A guide to charging for official information under the OIA](#).

There is no specific charging provision in the OIA; however, several provisions of charging for decisions on requests are mentioned in section 15 of the OIA, which relates to providing decisions on request. In essence:

- An agency 'may charge for the supply of official information'.
- An agency that receives a request for official information must, within the statutory or extended timeframe, make and communicate its decision 'whether the request is to be granted and [if so] in what manner and for what charge [if any]'.
- Any charge fixed must be 'reasonable', and regard may be had to the cost of labour and materials involved in making the information available, and any costs incurred in meeting an urgent request.
- An agency can require the whole or part of any charge to be paid in advance.
- Complaints about charges can be investigated by the Ombudsman. This means that agencies can impose a reasonable charge, subject to external review by the Ombudsman, to recover some of the costs of actually making the information available.

Corrections does not ordinarily charge requesters for OIA requests and is not believed to have charged an OIA requester for many years (at least prior to 2009).

Any proposal to charge a requester for an OIA request should be carefully considered and you should contact the Manager Ministerial Services in the first instance.

Charging may only be considered if Corrections intends to release some or all the requested information. No charge can be made in respect of information that is withheld.

It is also not reasonable to charge for complying with simple requests. However, it may be reasonable to recover some of the costs associated with requests for information that would require considerable labour and materials.

If a request is such that processing it would impair the effective administration of your business unit, it may be appropriate to consider a refusal of the request under section 18(f) of the OIA, where it is determined that providing a response to the request would require substantial collation or research. In these cases, Corrections should also consider inviting the requester to refine or clarify their request.

### ***Liaising with other agencies***

Where documents refer to other agencies, such as Oranga Tamariki or New Zealand Police, it is important to contact those agencies to get their views about the documents and whether their individual staff members should have their names removed.

We should also ask the agency if the release could compromise their work (see the maintenance of law provision described in the table above). This consultation process is undertaken by all government agencies, so you may also receive requests from them about your views of releasing information that they hold on their files.

### ***Consultation with other agencies and third parties***

Consultation with third parties is sometimes necessary when processing an OIA request.

Sometimes you will need to consider consult with other government agencies that are also subject to the OIA. For Corrections this happens most commonly other justice sector agencies. For example, when releasing emails to and from Oranga Tamariki staff for a release relating to the development of a joint policy, or New Zealand Police in a case where their documentation or commentary is incorporated in a Corrections-produced event review. Sometimes this consultation will result in a partial transfer of the request under section 14 of the OIA. As transfers must be completed within 10 working days it is important to get in contact with the other agencies as soon as possible.

In other cases, you may need to consider consulting with other third parties such as externally contracted

organisations, community representatives or members of the public whose information is incorporated in the information considered for release.

Under section 15A of the OIA you can extend the maximum statutory timeframe for deciding on a request for a reasonable period of time, if 'consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit' (refer to extensions of time below). Consultation might be internal or involve external parties.

As with all consultation and preparatory material relating to OIA requests, it's important that Corrections keeps full and accurate records of interactions with any third parties in relation to OIA requests and proactive releases, in accordance with normal prudent business practice and as required by section 17(1) of the Public Records Act 2005.

Consultation with third parties should be determined on a case by case basis. When reviewing the information at issue, ask yourself the following questions:

- Is the information about a third party (ie, personal information about an identifiable individual or corporate entity)?
- Was the information supplied by a third party?
- Could the release of this information adversely affect a third party (ie, impact on their privacy or lead to harassment, risk their safety, breach an obligation of confidence, or prejudice their commercial position)?

If the answer to any of these questions is yes, it may be appropriate to consult the third party.

Ultimately though, any decision on a request is that of Corrections. While consultation and feedback from external parties may have a bearing on the decision to release or refuse any information, the views of other parties do not override Corrections' decision to the contrary.

The Ministerial Services team manages all OIA requests that involve consultation with the Office of the Minister of Corrections.

OIA requests or proactive releases involving the Minister of Corrections are ones where there is the

potential for the Minister to be affected by the release of the information because: their office supplied the information, it relates to their functions, activities or legislative interests as a Minister; or they may be required to prepare for the possibility of public or political commentary.

As with other agencies subject to the OIA, Corrections will on occasion transfer part or all of an OIA request to the office of the Minister of Corrections under section 14 of the OIA. The need for transfer will be determined on the facts of the particular case, with regard to the specific information at issue and the functions of the Minister of Corrections, and in consultation with the office of the Minister of Corrections.

Under the 'no surprises' policy, Corrections' Ministerial Services team also notifies the office of the Minister of Corrections on a weekly basis of receipt of any OIA request involving the Minister, including where the requested information: relates to the Minister of Corrections' functions or activities; could impact on the Minister of Corrections' functions or activities; was generated by or on behalf of the Minister of Corrections; is sensitive or controversial; or is likely to be published in the news media or debated in the House. The notification will generally include the name of the requester, the topic, the date registered, and the date

due. There may be some situations where the name of the requester will be withheld for privacy reasons and this will be considered on a case by case basis.

Corrections will consider the input of the Minister of Corrections' office on an OIA request or proactive release in good faith and with an open mind, before deciding whether that input provides a reasonable basis for changing its proposed decision. As above however, the decision to release information that may affect the office of the Minister of Corrections still ultimately rests with Corrections as the deciding agency.

Further information relating to third party consultations can be found on the Ombudsman's website.

### ***Recordkeeping and Document Security Policy***

The OIA requires that information is protected only to the extent that it is necessary for the public interest or for personal privacy. The legislation provides for the availability of official information and takes precedence over other considerations, even when information has been classified or has an endorsement.

Corrections' Recordkeeping and Document Security Policy, includes a security classification system developed for official information held by or shared between government organisations, according to the information's sensitivity.

Classification may not be static as information may be more sensitive at one time than another. The system ranges from UNCLASSIFIED up to TOP SECRET as follows:

	National Security	Policy and Privacy	
<b>Red</b>	<b>TOP SECRET</b>		Requires security clearance to access, special handling, marking, storage and control
<b>Blue</b>	<b>SECRET</b>		
<b>Green</b>	<b>CONFIDENTIAL</b>	<b>SENSITIVE</b>	Chief Executive controlled. Requires marking, secure handling and storage.
<b>Black</b>	<b>RESTRICTED</b>	<b>IN CONFIDENCE</b>	
		<b>UNCLASSIFIED</b>	No requirements

For more information, you can refer to the full policy on [tato](#), [here](#).

## Releasing official information

### How to release official information

Although we often release official information by providing a photocopy or PDF of the documents, [section 16 of the OIA](#) notes it can be made available in a number of ways:

OIA Release Method	OIA Section
Inspection of the documents	<a href="#">Section 16(1)(a)</a>
Copies of the documents	<a href="#">Section 16(1)(b)</a>
Viewing the file (a staff member will need to be present)	<a href="#">Section 16(1)(a)</a>
Viewing an audio-visual recording or listening to a sound recording (a staff member will need to be present)	<a href="#">Section 16(1)(c)</a>
Transcript (where the record is a sound recording)	<a href="#">Section 16(1)(d)</a>
Excerpt or written summary (e.g. when redactions have rendered the original document unusable)	<a href="#">Section 16(1)(e)</a>
Orally	<a href="#">Section 16(1)(f)</a>

**Note:** All the above information sources may be made available in electronic form.

Where a document is an investigation into Corrections' handling of an incident and that document may contain the personal information of several people (including staff), as well as security implications, we could consider summarising the report.

#### Examples:

- A person seeks a copy of an investigation into an incident relating to his friend's approval to reside at an address (the person attached his friend's consent to the request). The Manager considers the operational review discloses too much personal information about other individuals, as well as internal procedural information that has security implications. She decides to provide the requester with a summary of the review, under section 16(1)(e) of the OIA.
- A person in prison requests a copy of the CCTV footage that allegedly shows a tennis ball (filled with contraband) flying over the prison fence. The Residential Manager decides that the footage has security implications, and so decides to provide the person with an opportunity to view the footage in the manager's office. This decision was issued to the person under section 16(1)(c) of the OIA, and arrangements were made for the viewing the following week.

The requester may choose how they receive the information. However, if the preferred form impairs the efficient administration of the Department, or has legal implications, then the requester's preference does not need to be facilitated. In such cases, you need to inform the requester as to why the information can't be provided in the requested way and, if the requester wishes, the grounds in support of that reason (section 16(3)(b) of the OIA).

#### Making PDFs searchable

Before sending the final PDF OIA response, the text should be made searchable to allow the requester to search keywords within the response. An OIA that is developed in Microsoft Word, signed using an e-signature, and saved as a PDF, is already searchable and does not require any further action. An OIA that is physically signed and scanned as a PDF will need to be converted from an image to a searchable format. To ensure the PDF is searchable, the following steps should be followed:

1. Scan in a copy of the finalised response and open it in Adobe Acrobat XI Pro
2. Click on 'Tools', then 'Text Recognition'
3. Click on 'In This File', select 'All pages' and click 'OK'
4. Save the file and close.

You can find more information about Adobe Acrobat XI Pro on Tatou.

### ***Refusing official information***

Once Corrections has identified that there is some information that cannot be released to the requester, a decision must be issued providing the requester with the details.

The advice to the requester needs to include:

- the reason(s) for refusing the information,
- the relevant OIA refusal provision(s), and
- the fact that the requester can seek a review of the decision from the Office of the Ombudsman.

For a response letter template, see the 'Information Requests Tools and Templates' page on Tatou.

### ***Example response letter:***

I refer to your request received on 12 June 2015, seeking a copy of [the official information] held by the Department of Corrections.

I attach a copy of [the requested documentation].

You will note that from some of the documents we have removed the name and personal details of other individuals, to protect their personal privacy in accordance with section 9(2)(a) of the Official Information Act 1982.

In accordance with section 9(1) of the OIA, we have also considered countervailing public interest relating to the release of the information. We are satisfied that in this case, public interest considerations do not outweigh the reason for refusal.

You have the right to ask the Ombudsman to investigate our decision to withhold this information. The contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143

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## Complaints

### *Complaints about OIA requests*

As noted in the sample refusal letter, requesters can raise their concerns about an OIA decision with the Office of the Ombudsman.

Complaints can also be directed to the Ministerial Services team in National Office, who can help with any concerns by attempting to clarify Corrections' decision.

Should a requester complain to the Office of the Ombudsman, that office will either help to clarify the matter with the requester, or write to National Office for further information. The Ministerial Services team in National Office manage the investigations and responses to Ombudsman enquiries.

Corrections-specific case notes about OIA complaints from the Ombudsman website are cross-linked on Tatou. These case notes can be used as a guide as to the Ombudsman's thinking in a certain area, but each new case still needs to be considered on the specifics of the request.