

Corporate: Governance
Proactive Release : 31 August 2018

20 August 2018

[REDACTED]
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The Health Media
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E-mail: [REDACTED]

Dear [REDACTED],

Official Information Act (1982) Request

I write in response to your Official Information Act request, received by us on 31 July 2018. You requested the following information:

- 1. Details of the process which is undertaken at your DHB to decide which items on an agenda are discussed with the public excluded.**
- 2. Who is ultimately responsible for making the decision on the agenda?**
- 3. Who makes the decision as to which clause of the OIA applies to a decision to exclude the public?**
- 4. Copies of any written policies on the process for deciding which issues should be discussed with the public excluded**

You also indicated you were interested in:

- The extent to which Board members meet to discuss issues outside of the normal board/ committee meeting structure.**
- Does your board routinely meet in advance of the board/ committee meeting and, if so, for how long?**
- Does your board hold regular meetings aside from the mandated board and board committee meetings - if so, how often and for how long?**

We respond to your questions in turn **below**.

1. Where a paper is submitted for consideration in the public excluded portion of the Board meeting, the primary author of paper, being an Executive Leadership Team member, is asked to identify the legislative ground relied upon for this purpose. An extract from the Official Information Act 1982 is circulated to aid in this exercise, and the withholding ground relied on is then also cited in the Board agenda. The Guidelines referred to in point 4 below are also available.

Papers submitted for the public excluded section may be subject to legal review. This will generally occur where there is doubt as to whether the paper meets the legal requirements for consideration in the public excluded section.

2. The Board or relevant Committee Chair ultimately confirms the agenda and papers for each Board/ Committee meeting before the agenda is released.
3. As indicated above, the primary ELT author of the paper identifies whether the paper is to be included in the public or public excluded portion of the Board meeting. Where the paper is to be included in the public excluded portion of the Board meeting, they are asked to specify the applicable withholding ground.
4. We **attach** CMDHB's Board and Board Committee Guideline.
5. Informal dialogue between CMDHB board members can occur between meetings on an ad-hoc and as-required basis. This might include communication via e-mail and phone conversations.
6. The CMDHB Board members meet 1 hour ahead of each full Board meeting. There are no DHB employees present for that session. The meeting is informal in nature and no decisions or formal resolutions are made during this session.
7. Outside the mandated Board sub-committee meetings (Hospital Advisory Committee, Disability Advisory Committee, and Community and Primary Health Advisory Committee), nominated Board members also attend Audit Risk and Finance Committee and Maaori Health Advisory Committee meetings. Neither of these Committees is authorised to make decisions or resolutions on behalf of the Board.

Special meetings of the Board may be called where there are specific matters that require the Board's attention between routine meetings. Once or twice a year, the Board may also hold informal workshops for planning, strategic development and training purposes.

I trust this information satisfactorily answers your query. If you are not satisfied with this response you are entitled to seek a review of the response by the Ombudsman under section 28(3) of the Official Information Act.

Please note that this response or an edited version of this may be published on the Counties Manukau DHB website.

Yours sincerely,



Gloria Johnson
Chief Executive (Acting)

Guideline: Board and Board Committee Guideline

Purpose

The Board is the governing body of Counties Manukau District Health Board and its role is to exercise the powers and perform the functions of the DHB as outlined in the New Zealand Public Health & Disability Act 2000. The role of the Board Committees is to provide advice to the Board specific to that Committee's Terms of Reference. The Board and Board Committees make decisions and recommendations based on the information and advice provided by management. The use of this Guideline and template facilitates the provision of quality advice from management to the Board and Board Committees. It also outlines what information is required, considerations that should be addressed, and the processes that must be followed with Board and Board Committee papers for inclusion on the relevant agendas.

Governance of CMDHB

The Board is empowered to make decisions and grant approvals. It is supported by five Board Committees:

- Hospital Advisory Committee (HAC)
- Community & Public Health Advisory Committee (CPHAC)
- Audit, Risk & Finance Committee (ARF)
- Disability Advisory Committee (DiSAC)
- Maori Health Advisory Committee (MHAC)

HAC, CPHAC, DiSAC are Statutory Committees. They have specific Terms of Reference and are tasked with providing advice and making recommendations to the Board. The Terms of Reference are available on Southnet via this link.

The Board, HAC, CPHAC and ARF meet six-weekly while DiSAC & MHAC meet twelve-weekly. The schedule is found on the CMDHB website <http://countiesmanukau.health.nz/about-us/what-we-do/governance/board-and-committees/>

Secretariat

- Board – ██████████ Board Secretary/EA to Chief Executive
- HAC, CPHAC & DiSAC – ██████████, EA to Director Strategic Development
- ARF – ██████████, EA to Chief Financial Officer
- MHAC – ██████████, EA to General Manager Maori Health

Please contact the relevant Secretary for advice or information. All papers are to be submitted to the appropriate secretariat by the required deadline.

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Process for inclusion on agenda

All papers except regular/routine reports to Board and/or Board Committee must be signed off by the relevant internal Committees and ELT prior to being submitted.

For papers that will proceed to the Board or Board Committee, ELT should be provided with two documents for approval:

1. An ELT-specific paper containing background and relevant managerial information; and
2. The proposed Board or Board Committee paper. If ELT requires amendments to the Board or Board Committee paper, the ELT member is responsible for ensuring the appropriate amendments have been made before the paper is submitted to the Board or Board Committee i.e. it does not need to be re-presented to ELT.

You should consider relevance of information provided to the Board or Board Committee and remove any unnecessary operational/managerial information from the Board/ Board Committee version.

Requirements for all Board and Board Committee papers

The following are requirements for all papers for Board and Board Committees:

- Papers will be called for by the Secretariat and are due two Fridays prior to the meeting. Items already approved by ELT will be included in the appropriate agenda however papers still need to be submitted on the appropriate template by the due date.
- Any papers received after the notified deadline for a meeting will be declined. This will be strictly enforced and there will be no exceptions.
- No papers are to be tabled at the meeting.
- All presentations must be notified in advance of the meeting, and must be provided to the Secretariat prior to the meeting, or brought with you on the day.
- Correct templates must be used for Board and Board Committees.

Guidance for the writing of papers

1. Structure

- Papers must be concise and easy to understand, utilising concise sentences, and bullet points where appropriate. Pay particular attention to grammar and spelling. Ensure that narrative is coherent throughout.
- Cover papers should not be more than 2-3 pages, followed by your actual documents (e.g. Business Case, etc). For routine reports see section 2.1.
- Identify whether your paper is Confidential or Public. Papers that are considered confidential must meet statutory thresholds for exclusion from the public part of a Board meeting or to withhold the information from the public. If the paper is Confidential the author must advise the Secretariat the reason from the list provided in Appendix 1 of this Guideline. The most common reasons for a paper to be

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Confidential are Commercial and Privacy. All papers except for those that are considered confidential are published on our website. Remember also that papers which are not classified as confidential are discoverable under the Official Information Act.

- Acronyms should be used sparingly, and if used, you should include a glossary at the start of the paper.
- Numbered paragraphs are not to be used.
- Embedded documents should not be included in any papers. Keep in mind that papers will be viewed on iPads and therefore A4 portrait documents are preferred. Consideration should be given to the legibility of graphs and other images in this medium.
- State who the sponsor (usually an ELT member) and authors (person holding the ‘pen’) are. The sponsor should ensure that there is a single ‘voice’ in the paper. Where multiple writers’ contributions are combined the sponsor should rewrite as required. Regardless of who has written the paper, the relevant ELT member must take responsibility for reviewing and signing off the paper prior to submission, and be able to respond to any questions relating to the paper at meetings.
- Papers should be written for the specific audience and not cut and pasted from other documents without subsequent thorough review.
- Templates must not be amended in any way – all margins, line spacing, font, etc, should remain as per the standard template.

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2. Content

- The template provides guidance on content for each section.
- All content must be balanced and provide an objective and accurate view. Where there are material differences in opinion, it may be useful to provide this context. Similarly, where there are risks to the initiative or broader risks to the organisation, these should be explicitly identified along with mitigation strategies. Advice to the Board or Board Committees should not be biased towards a certain perspective and should maintain objectivity e.g. include positive and negative aspects. Do identify any preferences and the rationale where there are options.
- Keep in mind that governance information is different to managerial information. Pitch the information at the right level and with the appropriate amount of detail. A Board Committee paper will generally require more detail than a Board paper.
- The sponsor is responsible for ensuring that the content of papers provided to the Board and Board Committee do not contain detailed operational reports. Summaries of key issues relevant to the Board or Board Committee should be included.
- Where there is a lot of detail e.g. quantitative data, provide a summary of the key messages, implications and any consequential actions.
- Variances should include proper analysis i.e. provide reasons why there is a variance and what the relevance is. An example is explaining what 2% growth means, how material it is and what impact it will have. You may also wish to explain what has improved as the result of actions taken. Relevant comparative and selected graphs are useful. Consider the legibility of graphs as documents will be read on an iPad.
- Clearly identify key areas for the Board or Board Committees' focus.
- If options are being identified for consideration, identify a preference and rationale.
- Where advice is being sought from a Board Committee state what you want from them in the Purpose section and be explicit in the Recommendations section as to what you want from the Board Committee e.g. agree to support a specific option and recommend to the Board. The subsequent Board paper will then need to reflect the Board Committee process and address any issues raised by the Board Committee. Detailed analyses will not need to be repeated in the Board paper if the Board Committee is making a recommendation to the Board.

Regular or routine reports

- Regular or routine reports do not usually need to be approved by ELT.
- The maximum length of regular reports such as General Manager monthly reports is 3 pages.
- The focus should be on reporting by exception and include high and low-lights with discussion on why, the impact, and in the case of low-lights what is being done to rectify.

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3. Recommendations

- All papers must contain a clear Purpose and Recommendation outlining what you are seeking from the Board or Board Committee. The recommendation should be appropriate for the audience who will be considering the request:
 - Board Committees can Note, Recommend to Board, or Receive. Board Committees are not able to 'approve' papers unless the Board has passed a formal Resolution providing them with a specific delegation. Board Committees can however 'recommend' a paper to Board. If a paper is submitted to a Board Committee/ELT for endorsement, and then requires Board approval, you should include a specific point in the Recommendation advising that you are seeking their endorsement for this paper to proceed to Board.
 - A Board paper can contain alternative recommendations to those of Board Committees (above).
 - If you are seeking approval for expenditure, remember to include the total cost (and timeframe if relevant) in the recommendation.
- State what happens next e.g. responsibility for action, consultation.

Associated Documents

Other documents relevant to this guideline are listed below:

NZ Legislation & Standards	New Zealand Public Health and Disability Act 2000 Official Information Act 1982
CM Health Documents	Template – ARF Template - CMH Board Template - CPHAC Template - DiSAC Template - HAC Template - MHAC
Other related documents	

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APPENDIX 1**New Zealand Public Health and Disability Act 2000****Schedule 3, Clause 32 Right of board to exclude public**

A board may by resolution exclude the public from the whole or any part of any meeting of the board only on 1 or more of the following grounds:

- (a) that the public conduct of the whole or the relevant part of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under any of sections 6, 7, or 9 (except section 9(2)(g)(i)) of the Official Information Act 1982:
- (b) that the public conduct of the whole or the relevant part of the meeting would be likely to result in the disclosure of information the public disclosure of which would—
 - (i) be contrary to the provisions of a specified enactment; or
 - (ii) constitute contempt of court or of the House of Representatives:
- (c) that the purpose of the whole or the relevant part of the meeting is to consider a recommendation of an Ombudsman made under section 30(1) or section 35(2) of the Official Information Act 1982 to the board:
- (d) that the purpose of the whole or the relevant part of the meeting is to consider a communication from the Privacy Commissioner arising out of an investigation under Part 8 of the Privacy Act 1993:
- (e) that the exclusion of the public from the whole or the relevant part of the meeting is necessary to enable the board to deliberate in private on a decision or recommendation as to whether any of the grounds in paragraphs (a)to(d) are established in relation to all or any part of any meeting of the board.

Official Information Act 1982**Section 6 Conclusive reasons for withholding official information**

Good reason for withholding official information exists, for the purpose of section 5 of this Act, if the making available of that information would be likely—

- (a) To prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand; or
- (b) To prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by—
 - (i) The government of any other country or any agency of such a government; or
 - (ii) Any international organisation; or
- (c) To prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
- [(d) To endanger the safety of any person; or]
- [(e) To damage seriously the economy of New Zealand by disclosing prematurely decisions to change or continue Government economic or financial policies relating to—
 - (i) Exchange rates or the control of overseas exchange transactions:
 - (ii) The regulation of banking or credit:
 - (iii) Taxation:
 - (iv) The stability, control, and adjustment of prices of goods and services, rents, and other costs, and rates of wages, salaries, and other incomes:
 - (v) The borrowing of money by the Government of New Zealand:
 - (vi) The entering into of overseas trade agreements.]

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7 Special reasons for withholding official information related to the Cook Islands, Tokelau, or Niue, or the Ross Dependency

Good reason for withholding information exists, for the purpose of section 5 of this Act, if the making available of the information would be likely—

- (a) To prejudice the security or defence of—
 - (i) The self-governing state of the Cook Islands; or
 - (ii) The self-governing state of Niue; or
 - (iii) Tokelau; or
 - (iv) The Ross Dependency; or
- (b) To prejudice relations between any of the Governments of—
 - (i) New Zealand;
 - (ii) The self-governing state of the Cook Islands;
 - (iii) The self-governing state of Niue; or
- (c) To prejudice the international relations of the Governments of—
 - (i) The self-governing state of the Cook Islands; or
 - (ii) The self-governing state of Niue.

9 Other reasons for withholding official information

- (1) Where this section applies, good reason for withholding official information exists, for the purpose of section 5 of this Act, unless, in the circumstances of the particular case, the withholding of that information is outweighed by other considerations which render it desirable, in the public interest, to make that information available.
- (2) Subject to sections 6, 7,... 10, and 18 of this Act, this section applies if, and only if, the withholding of the information is necessary to—
 - (a) Protect the privacy of natural persons, including that of deceased natural persons; or
 - [(b) Protect information where the making available of the information—
 - (i) Would disclose a trade secret; or
 - (ii) Would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information; or]
 - (ba) Protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information—
 - (i) Would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied; or
 - (ii) Would be likely otherwise to damage the public interest; or
 - (c) Avoid prejudice to measures protecting the health or safety of members of the public; or
 - (d) Avoid prejudice to the substantial economic interests of New Zealand; or
 - (e) Avoid prejudice to measures that prevent or mitigate material loss to members of the public; or
 - (f) Maintain the constitutional conventions for the time being which protect—
 - (i) The confidentiality of communications by or with the Sovereign or her representative;
 - (ii) Collective and individual ministerial responsibility;
 - (iii) The political neutrality of officials;

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- (iv) The confidentiality of advice tendered by Ministers of the Crown and officials; or
- (g) Maintain the effective conduct of public affairs through—
 - (i) The free and frank expression of opinions by or between or to Ministers of the Crown [or members of an organisation] or officers and employees of any Department or organisation in the course of their duty; or **[Note this section does not apply to DHBs it is expressly excluded by clause 32(a), schedule 3 of the NZPHD Act]**
 - (ii) The protection of such Ministers, [members of organisations], officers, and employees from improper pressure or harassment; or
- (h) Maintain legal professional privilege; or
- [(i) Enable a Minister of the Crown or any Department or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities; or]
- (j) Enable a Minister of the Crown or any Department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations); or
- (k) Prevent the disclosure or use of official information for improper gain or improper advantage.

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