

27<sup>th</sup> April 2021



Dear 

### **Official Information Act Request for – OIA Services**

I write in response to your Official Information Act request received by us 29<sup>th</sup> March 2021, you requested the following information:

- 1. Does your organisation have a policy or guidelines in relation to charging requestors for supplying information under the Official Information Act 1982?**
- 2. If yes, please supply a written copy of the policy/guideline, including grounds for seeking costs for supplying information, charges for photocopying, scanning or other copying of information and the hourly rate for staff time in compiling requests?**
- 3. If not, what does your organisation charge for photocopying, scanning or other copying of information and what is the hourly rate for staff time in compiling requests?**

**In the 12 months from 01 January 2020 to December 31, 2020:**

- 4. How many requests for information under the Official Information Act did your organisation receive?**
- 5. Of these, in how many was the requestor advised that they would incur charges for copying and staff time, or any other reason?**
- 6. In how many of these, did the requestor pay the required charge for supplying of information?**
- 7. In total, how much did your organisation receive in payments for supplying information under the OIA?**
- 8. What were the largest 10 amounts paid by requestors in charges for fulfilling OIA requests?**

### **Counties Manukau Health Response:**

For context Counties Manukau Health (CM Health) employs over 8,500 staff and provides health and support services to people living in the Counties Manukau region (approx. 601,490 people). We see over 118,000 people in our Emergency Department each year, and over 2,000 visitors come through Middlemore Hospital daily.

- 1. Does your organisation have a policy or guidelines in relation to charging requestors for supplying information under the Official Information Act 1982?**
- 2. If yes, please supply a written copy of the policy/guideline, including grounds for seeking costs for supplying information, charges for photocopying, scanning or other copying of information and the hourly rate for staff time in compiling requests?**

**3. If not, what does your organisation charge for photocopying, scanning or other copying of information and what is the hourly rate for staff time in compiling requests?**

CM Health follows the Official Information Act 1982 where under section 15 an agency can charge for the supply of information. Any charge fixed must be 'reasonable' and 'regard may be had to the cost of the labour and materials involved in making the information available'.

At CM Health we also have a procedure for "Responding to Official Information Act Requests" which we have attached as Appendix 1. This procedure sets out the process that staff must follow when responding to Official Information Act requests and includes guidance around charging.

In addition, the Ministry of Justice has published *Charging Guidelines for Official Information Act 1982 Requests* on their website which sets out details of the calculation of charges, together with circumstances where waiver of a charge may be appropriate. This document is publicly available at the below link:

- <https://www.justice.govt.nz/about/official-information-act-requests/directory-of-official-information/charging-guidelines-for-oi-a-requests/>

**In the 12 months from 01 January 2020 to December 31, 2020:**

**4. How many requests for information under the Official Information Act did your organisation receive?**

CM Health received 185 OIA requests over this timeframe.

**5. Of these, in how many was the requestor advised that they would incur charges for copying and staff time, or any other reason?**

**6. In how many of these, did the requestor pay the required charge for supplying of information?**

**7. In total, how much did your organisation receive in payments for supplying information under the OIA?**

**8. What were the largest 10 amounts paid by requestors in charges for fulfilling OIA requests?**

Nil, CM Health did not advise any requester they would incur any charges in relation to their Official Information Act request.

I trust this information answers your request. You are entitled to seek a review of the response by the Ombudsman under section 28(3) of the Official Information Act. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or Freephone 0800 802 602.

Please note that this response or an edited version of this may be published on the Counties Manukau Health website. If you consider there are good reasons why this response should not be made publicly available, we will be happy to consider this.

Yours sincerely



**Fepulea'i Margie Apa**  
**Chief Executive Officer**  
**Counties Manukau Health**

## Procedure: Responding to Official Information Act (OIA) Requests

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### Purpose

The purpose of this procedure is to set out the process that staff must follow when responding to Official Information Act 1982 (OIA) requests. Counties Manukau DHB is subject to requests under the Official Information Act 1982

### Roles and responsibilities

This procedure is carried out by the staff with responsibility for responding to OIA requests.

### Objective

The objective of this Procedure is to ensure that all OIA requests will be responded to in compliance with the relevant legislation, including the OIA and the Privacy Act 1993.

### Background

#### What is the Official Information Act?

The Official Information Act is an accountability framework for publicly funded organisations. The OIA looks to ensure that government activities are open and transparent and that official information is available to the people of NZ in order to:

- enable their participation in the making and administration of laws and policies; and
- promote the accountability of Ministers and their officials.

The OIA, however, recognises that not all official information should be made available and allows information to be withheld in certain specified circumstances.

Counties Manukau District Health Board (CM Health) is subject to the OIA.

#### What is Official Information?

Official information is defined as any information held by a Department, Minister of the Crown or government organisation.

All information the DHB creates or holds or which is held on its behalf is official information. This includes paper and electronic records. Information covered by the OIA may be contained in:

- letters
- emails
- reports
- notes or minutes of meetings
- computer drives, USB sticks and smart phones
- information held by a contractor doing work on the DHB's behalf
- recollections of meetings for which minutes were not taken
- oral advice
- information provided to the DHB by others.

Document ID:	A346999	CMH Revision No:	3.0
Service :	N/A - Controlled document used across the organisation	Last Review Date :	2/04/2019
Document Owner:	Chief Executive Officer (CEO)	Next Review Date:	2/04/2022
Approved by:	Executive Leadership Team (ELT)	Date First Issued:	01/04/2014
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## Procedure: Responding to Official Information Act Requests

### Principle of Availability

The OIA is based on the overriding principle that information must be made available unless there is good reason for withholding it - the principle of availability. All decisions on whether to release information must be made with this overriding principle in mind.

### What is an Official Information Act request?

A request can be made orally or in writing. It is not necessary for the request to state that it is made under the OIA. It is enough for an individual simply to ask for information. Where the original request is made orally, the requester should be asked to put the request in writing so there is a record of the request.

The official information requested should be specified with sufficient particularity that it is clear what information is being sought.

The requester does not need to articulate the reason for their request; the purpose the information is wanted for is irrelevant.

### Who can make an Official Information Act request?

An official information request can be made by:

- a New Zealand citizen (whether in NZ or not)
- a New Zealand permanent resident (whether in NZ or not)
- any other person who is actually in New Zealand
- any body corporate (e.g. a company or a trust or incorporated society) that is incorporated in NZ or that has a place of business in NZ.

If a person making a request does not fall within any of these categories then they are not entitled to make a request under the OIA and the DHB has no obligation to provide information under the OIA. Such requests should always be acknowledged and consideration should be given to whether the information should be released or the request addressed in some other way.

### Duty of assistance

Under section 13 of the OIA, the DHB has a duty to assist anyone who:

- is entitled to make a request under the OIA; and
- wants to make a request under the OIA; and
- has failed to make a request with “due particularity”; or
- has not made a request to the appropriate agency.

The “due particularity” provision requires the DHB to clarify a request which is unclear or appears too general/broad in scope, rather than simply refusing the request or trying to guess what the requester is seeking.

Requesters should be asked to confirm any conversation clarifying the request in writing, or written confirmation should be provided to them so the request is not misunderstood.

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## Procedure: Responding to Official Information Act Requests

### Time limit for responding to OIA requests

A response must be provided as soon as reasonably practicable and no later than 20 working days after the day the request was received by the DHB (note that this may not be the day that the Department responding receives the request).

If a request has been transferred from another agency, the 20 working days runs from the day after the request was received from that agency.

If the DHB fails to comply with the 20 working day time limit (or with any extended time limit) the failure is deemed to be a refusal to make the information available and the Ombudsman may investigate.

### Extensions of Time Limit

The time limit may be extended for a reasonable period if:

- (a) the request is for a large quantity of information or necessitates a search through a large quantity of information and meeting the original time limit would unreasonably interfere with Counties Manukau Health's operations; or
- (b) consultation is necessary to make a decision on the request and such that a proper response to the request cannot reasonably be made within the original time limit.

The requestor must be notified, within the 20 working day period, that an extension of time is necessary. The notification must advise the requestor of:

- the date by which a response will be provided
- the reasons for the extension
- their right to complain to an Ombudsman about the extension
- any other necessary information.

### Urgent requests

If the request is urgent the requestor must provide supporting reasons for the urgency. Those reasons need to be assessed on a case by case basis remembering that the obligation is to answer the request as soon as reasonably practicable.

### OIA Requests are a Priority

OIA requests must be given priority to ensure that the time limits specified in the OIA are met.

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## Procedure: Responding to Official Information Act Requests

### Procedure

OIA requests managed via the CEO Office, in conjunction with the OIA Specialist in the CM Health Communications Team, who is responsible for administration, registration and coordination of responses. The OIA Specialist will identify the appropriate Director/ Division to provide material for a response (for example, hospital services).

All correspondence (acknowledgment of receipt and return of the responses) to the requester are sent by the Chief Executive's office only – no communication is to be sent directly.

#### 1 Register request

**On Receipt :** All OIA requests will be recorded in a central tracking system by the OIA Specialist, including confirmation of the due dates and identification of a responsible Director/Responder. Individual services within the DHB may also have their own OIA database. A brief acknowledgment is sent by the CEO Office to the requester to confirm receipt.

#### 2 Confirm the OIA applies

The OIA Specialist is responsible for assessing whether the request is an official information request, or a privacy request. This may involve consultation with the CM Health Legal Team and/ or Privacy Officer, as well as the Clinical Information Service. There are different processes for clinical information/ personal information requests:

- OIA deals with requests for official information
- Privacy requests are those specifically made for personal information about any natural living person or a deceased person.

An OIA request can involve a request for personal information where for example, the request is for information about a decision made by a person. However, if the request is a privacy request, it should be dealt with in accordance with the relevant CM Health Information/Privacy policy.

#### 3 Allocate request to appropriate person to process

Following registration, the request is forwarded by the OIA Specialist to an appropriate Director/ Service and persons within the DHB to prepare a response.

#### 4 Transfer of a request within 10 working days of receipt

The OIA Specialist will determine if it is appropriate for a request (or parts of requests) to be transferred where the information requested is either:

- not held by the DHB but is believed to be held by another Minister, government agency, local authority or organisation; or
- believed by the person dealing with the request to be more closely connected with the functions of another Minister, government agency or local authority or organisation.

This provision, together with the duty of assistance means the DHB should always transfer request (or parts of requests) where the information is believed to be held by, or be more closely connected to the functions of, another government agency. A letter advising that the request has been transferred must be sent to the requester and the relevant agency.

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The decision to transfer a request should be made within 10 working days. Where a request is transferred to another agency, the DHB's responsibilities in respect of the request will generally cease.

### 5 Check whether same request has been made of other DHBs

Sometimes the nature of the request will suggest that it might be a standard request made to more than one DHB and a national response may be applicable. It is important in such cases to ensure that answers are coordinated and consistent, where that is appropriate but nonetheless in accordance with the OIA.

- The OIA Specialist will ensure consultation with relevant staff within the DHB or at other DHBs or Support agencies is undertaken to see if there are similar requests. Services may also use networks to share preparation
- If a number of similar or related requests have been received by the DHB, the OIA Specialist will support a coordinated response, usually with one staff member/manager taking lead responsibility.

### 6 Clarify scope and content of the request

Ensure the scope and content of the request is clear. If the request is unclear or too broad, it should be clarified with the requester. The requester may need assistance to determine what information they are seeking and the DHB must give this assistance.

The OIA Specialist will communicate with the requester in the first instance.

If the clarification/amendment is sought within 7 working days of the original request, the clarified request is treated as a new request.

### 7 Charging for release of information

The Government Guidelines on charging suggest that a variety of factors may be relevant when assessing whether or not it is reasonable to charge for the supply of certain information. These factors include actual costs incurred to release information such as:

- Staff time used for preparing information for release; and
- Photocopying charges and other fixed costs incurred in preparing information for release; and
- Any urgency required by the requestor.

In deciding whether to charge, all the circumstances relevant to the request must be considered, including the ability of the requester to pay the charge, and the public interest in the release of the information. The OIA Specialist can provide early guidance on this if needed, and seek further input from the legal team.

A proposal to charge requires approval from the CEO who may decide to waive charges, in whole or in part, or the requirement for payment in advance, if the CEO considers that the public interest would be best served by doing so.

At a general level, the Ombudsmen have taken a view that the charging regime set out in the Government Guidelines is reasonable. These Guidelines suggest that staff time in excess of an aggregate of one hour can be charged for if the circumstances are reasonable. These charges are:<sup>1</sup>

<sup>1</sup> Ministry of Justice. *Charging Guidelines for Official Information Act 1982 Requests*. (18 March 2002).

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- a charge of \$38 per half hour after the first five hours searching for and collating the information
- photocopying or printing at 20 cents for each A4 page in excess of 20 pages
- actual costs involved in putting documents on disc, retrieving information from off site and copying recordings.

The DHB *may not* charge for:

- extra time spent locating /retrieving information if it is not where it ought to be;
- time spent deciding whether or not to release the information and to what extent.

Requests about the same or similar subject matter and received simultaneously or in short succession from the same requestor may be treated as one request.

If the DHB decides to impose a charge (after first deciding to release the information requested) it should notify the requestor of the approval to release the information and the estimated amount (and the basis for) the charge, and that the requestor can ask the Ombudsman to review the charge.

### 8 Withholding information: Assessment against the criteria in the OIA

Staff handling a request should approach all requests on the presumption that information will be released, unless one of the grounds for withholding information specified in the OIA applies.

Consideration should be given to whether there are grounds to withhold information at an early stage. Information may only be withheld if one of the withholding grounds specified in the OIA is satisfied. The DHB's Legal Team should ideally be involved to confirm the right to withhold.

A list of the standard descriptions for withholding information under the OIA that may apply to the DHB is attached to this procedure at Appendix 1.

The focus should be on the information, not the form in which the information is held. In some cases, part of a document may be provided and parts withheld, or a summary of information prepared. The OIA Specialist can assist with this preparation of information.

### 9 In what form should the information be released

Once a decision has been made to release some or all of the information requested, consideration should be given to the form in which the information should be released. The form should be that asked for by the requester, unless one of the following exceptions applies:

- the information is released in its entirety;
- the information is released in its entirety, subject to certain conditions, such as a restriction regarding further disclosure or an agreement to pay a reasonable charge;
- release of the information with a contextual statement – this can be useful if there is a concern that the information on its own might be misleading or incomplete;

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- partial disclosure of the information (the document can contain deletions or be in the form of a summary or a number of excerpts); or
- making the information available by way of inspection.

### 10 Drafting a response

A response should be drafted and must:

- Answer the questions asked, or provide the information requested
- Note any information which has been withheld, and the statutory grounds upon which it has been withheld
- Inform the requester of their right to complain to the Ombudsman if unsatisfied with the response.

### 11 Legal approval of draft response

The draft response should be approved by a DHB legal advisor where patient information is involved, it is proposed to withhold information or the information is sensitive. The following must be forwarded to Legal:

- Request
- Draft response
- Copies of all documents to be released, with any information to be withheld being clearly identified
- An explanation of the reasons for withholding information.

### 12 Finalisation of response and CEO sign off

The response should be finalised/approved by General Manager and provided to the OIA Specialist **at least five working days** before the expiry of the time limit for response. The OIA Specialist will manage the sign out and CEO Approval process.

Once the CEO has signed the response, a copy is filed in Objective.

The OIA Specialist will provide an electronic copy of the approved response to the person who drafted the response, the Board Chairman, the Communications Team, and the Ministry of Health OIA team, prior to release. The OIA Specialist will also ensure that most OIA Responses are also published on the CMDHB website within 10 working days of release.

An electronic file, including all correspondence, emails and drafts of each OIA response and the preparation work is maintained by the OIA Specialist, along with the OIA Register. The person responsible for preparing the response must also register the response on any service database if required.

### 13. Complaints and correspondence with the Office of the Ombudsman

The DHB is obliged to advise requesters of their right to complain to the Ombudsman if not satisfied a response.

The Ombudsman may choose to investigate the DHB processes related to any request and complaint. These investigations will be responded to via the CEO Office, with input and advice from the Legal Team and administrative support by the OIA Specialist.

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## Procedure: Responding to Official Information Act Requests

### Definitions

Term/Abbreviation	Description
OIA	Official Information Act 1982

### Associated Documents

Other documents relevant to this procedure are listed below:

NZ Legislation	Official Information Act 1982 Privacy Act 1993 Health Information Privacy Code 1994
NZ Standards	None
CMDHB Policies / Procedures	Policy: Responding to Official Information Act Requests Procedure: Disclosure of Health Information – how a third party requests personal health information about a patient.
Other related documents	The OIA for Ministers and agencies: A guide to processing official information requests: <a href="http://www.ombudsman.parliament.nz/resources-and-publications/documents/the-oia-for-ministers-and-agencies">http://www.ombudsman.parliament.nz/resources-and-publications/documents/the-oia-for-ministers-and-agencies</a>  Ministry of Justice, Charging Guidelines for Official Information Act 1982 Requests 18 March 2002, at <a href="http://www.justice.govt.nz/publications/global-publications/m/ministry-of-justice-charging-guidelines-for-official-information-act-1982-requests-18-march-2002">http://www.justice.govt.nz/publications/global-publications/m/ministry-of-justice-charging-guidelines-for-official-information-act-1982-requests-18-march-2002</a>
Website	<a href="http://www.ombudsman.parliament.nz/">http://www.ombudsman.parliament.nz/</a>

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## Appendix One: Reasons under the OIA for withholding information

Good reason for withholding information will exist in the circumstances specified in sections 6, 9 and 18 of the OIA unless the withholding of that information is outweighed by other considerations which make it desirable in the public interest to make the information available.

### *Standard descriptions for withholding information*

#### *Conclusive withholding reasons: section 6*

- Section 6 enables the withholding of information only if disclosure would be likely to prejudice the maintenance of the law (including investigation and detection of offences) or to endanger the safety of any person.

#### *Other withholding reasons: section 9*

- Section 9(2)(a) - privacy of natural persons
- Section 9(2)(b)(i) - trade secrets
- Section 9(2)(b)(ii) - unreasonable prejudice to the commercial position of a person
- Section 9(2)(ba)(i) - confidential information and prejudice to its future availability
- Section 9(2)(ba)(ii) - relates to confidential information and damage to the public interest
- Section 9(2)(c) – avoid prejudice to measures protecting the health and safety of the public
- Section 9(2)(d) – avoid prejudice to the substantial economic interests of New Zealand
- Section 9(2)(e) – avoid prejudice to measures preventing or mitigating loss to the public
- Section 9(2)(f)(i)-(iv) - constitutional conventions protecting the:
  - confidentiality of communications with the Sovereign
  - collective and individual ministerial responsibility
  - political neutrality of officials
  - confidentiality of advice tendered by Ministers or officials
- Section 9(2)(g)(i) and (ii)- the effective conduct of public affairs through the:
  - free and frank expressions of opinion by Ministers or officials
  - protection of Ministers or officials from improper pressure or harassment
- Section 9(2)(h) - maintaining legal professional privilege
- Section 9(2)(i) - enabling commercial activities to be carried out without prejudice or disadvantage
- Section 9(2)(j) - negotiations being carried out without prejudice or disadvantage
- Section 9(2)(k) - preventing the disclosure or use of official information for improper gain or advantage.

#### *Reasons to refuse requests: section 18 (administrative reasons)*

- Section 18(b) - the DHB can by virtue of section 10 neither confirm nor deny the existence or non-existence of the information requested
- Section 18(c)(i) - releasing the information would be contrary to the provisions of another statute

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- Section 18(c)(ii) - releasing the information would be contempt of court or the House of Representatives
- Section 18(d) - the information is, or will soon be, publically available
- Section 18(e) - the document containing the information does not exist or cannot be found
- Section 18(f) - the information cannot be made available without substantial collation or research
- Section 18(g) - the information requested is not held and the DHB does not believe that the information is held by another Department or Minister
- Section 18(h) – the request is frivolous or vexatious
- Section 18(i) – the information is trivial.

Information cannot be withheld where for example it would be potentially embarrassing or politically insensitive.

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