

Department of Labour
TE TARI MAHI



Policy for handling Official Information Requests

Updated May 2009

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OFFICIAL INFORMATION ACT

QUICKGUIDE

Process is Paramount

- The right decision should flow from good process!

It's Core Business not a Chore

- This is a service to the public we take pride in
- Plan it
- 3rd Tier have a key role.

The key things that MUST happen in 3 working days

- Register the request by logging with GEMS
- GEMS assign responsibility
- Choose the right Act
- Preliminary consultation where necessary
- Transfer request, if appropriate
- Extend time, if necessary
- Clarify scope/content with requester – give them a call!
- Address any cost issues.

What Rules always Apply?

- The 3 working day DoL rule
- Decisions made by 3rd Tier or above
- Assemble all the information
- Statutory time limits
- Notify requester of right to review by Ombudsman
 - if charging
 - if extending time
 - if information withheld
 - if imposing conditions on release
 - if providing information in an alternative form.
- Legal advice before withholding information.

Early Communication

- Clarifying scope/content with requester.

Key Principle

- Principle of availability.

What is Official Information

- Everything is!

No Surprises

- Consider who needs to know in advance

OFFICIAL INFORMATION ACT

CHECKLIST 1

REQUEST TO DOL

Processing Steps : Days 1-3

1. Register the Request by logging with GEMS
2. GEMS allocate a decision maker
3. GEMS allocate 3rd Tier to manage request
4. Confirm it is an OI Act request
5. Consider who should really answer the request
6. Consult where necessary (about who should handle the request)
7. (Where appropriate, transfer the request)
8. Check for other similar requests or PQs
9. Engage with requester to clarify scope or content where any doubt
10. Assess timing requirements – is an extension of time necessary?
11. Where appropriate, extend time
12. Consider whether any charge to be made and if so inform requester of details
13. Acknowledgement letter (if no transfer or extension).

Subsequent Processing Steps

14. Assemble all relevant information
15. Assess the information and apply the Act's criteria
16. Make a preliminary decision
17. Get legal advice if proposing to withhold anything
18. Consult where appropriate (including Minister's Office)
19. Final decision made by 3rd Tier
20. In appropriate cases, Minister's Office notified (at least 5 days before due date).

OFFICIAL INFORMATION ACT

CHECKLIST 2

REQUEST DIRECT TO MINISTER

Processing Steps : Days 1-3

1. Register request as Ministerial by logging with GEMS
2. GEMS allocate a decision maker (who will decide nature of advice to be given to Minister)
3. Allocate to someone to process request
4. Confirm it is an OI Act request
5. Consider who should really answer the request
6. Consult where necessary (about who should handle the request)
7. (Where appropriate, arrange for Minister to transfer the request)
8. Check for other similar requests or PQs
9. Engage with the requester on Minister's behalf to clarify scope or content where any doubt
10. Assess timing requirements – is an extension of time necessary?
11. Where appropriate, arrange for Minister to extend time
12. Consider whether any charge to be made and if so arrange for Minister to inform requester
13. Acknowledgement letter (if no transfer or extension and if not already acknowledged by Minister's office).

Subsequent Processing Steps

14. Assemble all relevant information
15. Assess the information and apply the Act's criteria
16. Consult where appropriate (including Minister's Office)
17. Make a preliminary decision
18. Get legal advice if proposing to recommend withholding anything
19. Decision on nature of final advice to Minister made by 3rd Tier or above.
20. Advice, including draft response letter, to Minister's office at least 5 days before due date.

OFFICIAL INFORMATION ACT

CHECKLIST 3

REQUEST TO DOL TRANSFERRED TO MINISTER

Processing Steps : Days 1-3

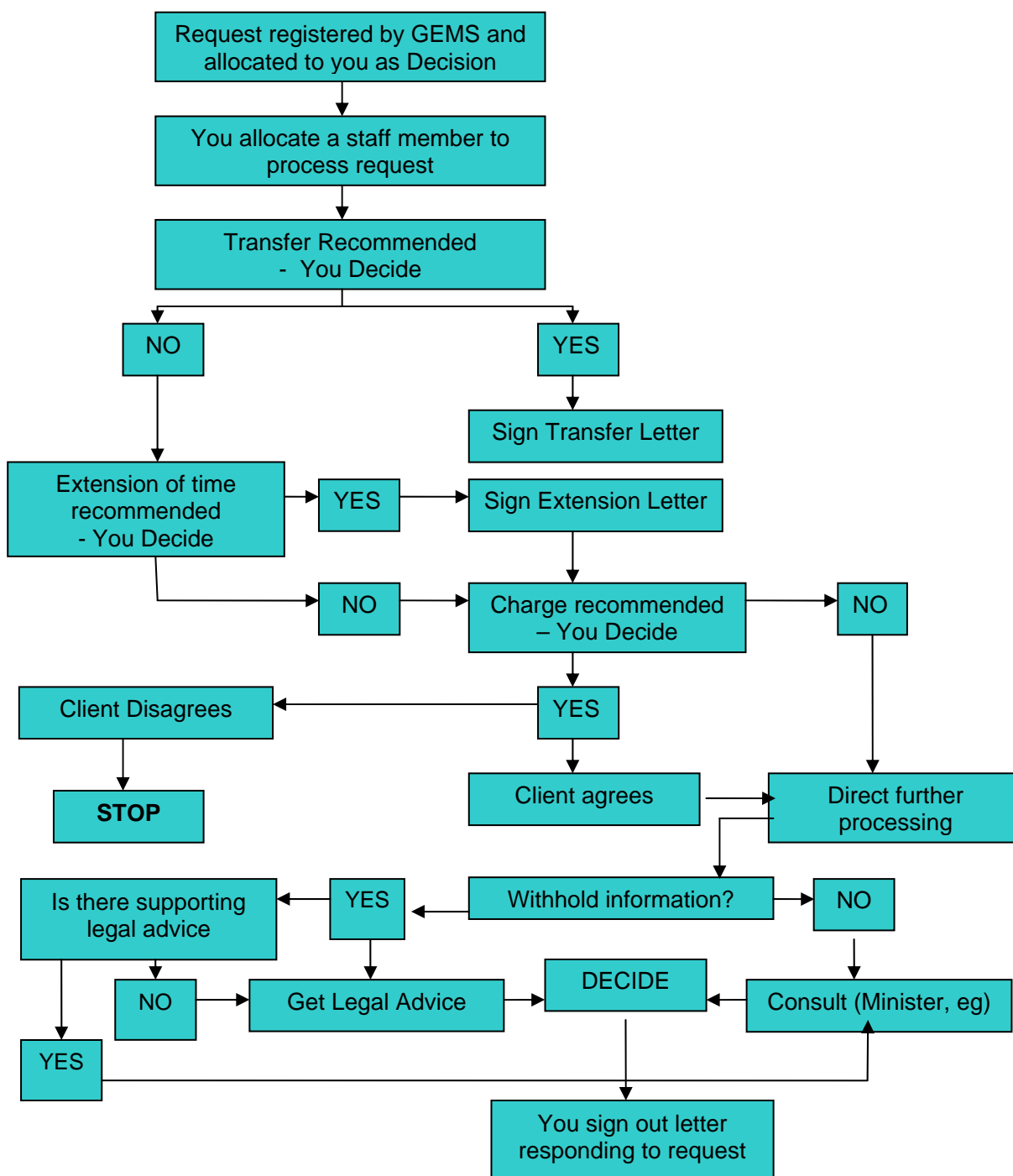
1. Register the Request by logging with GEMS
2. GEMS allocate a decision maker (who will decide nature of advice to be given to Minister)
3. Allocate to someone to process request
4. Confirm it is an OI Act request
5. Consider who should really answer the request
6. Consult where necessary (about who should handle the request)
7. Request transferred to Minister
8. Requester notified of transfer
9. Request re-registered as Ministerial
10. Check for other similar requests or PQs
11. Engage with the requester on Minister's behalf to clarify scope or content where any doubt
12. Assess timing requirements – is an extension of time necessary?
13. Where appropriate, arrange for Minister to extend time
14. Consider whether any charge to be made and if so arrange for Minister to inform requester
15. Acknowledgement letter (if no transfer or extension and if not already acknowledged by Minister's office).

Subsequent Processing Steps

16. Assemble all relevant information
17. Assess the information and apply the Act's criteria
18. Consult where appropriate (including Minister's Office)
19. Make a preliminary decision
20. Get legal advice if proposing to recommend withholding anything
21. Decision on nature of final advice to Minister made by 3rd Tier or above.
22. Advice, including draft response letter, to Minister's office at least 5 days before due date.

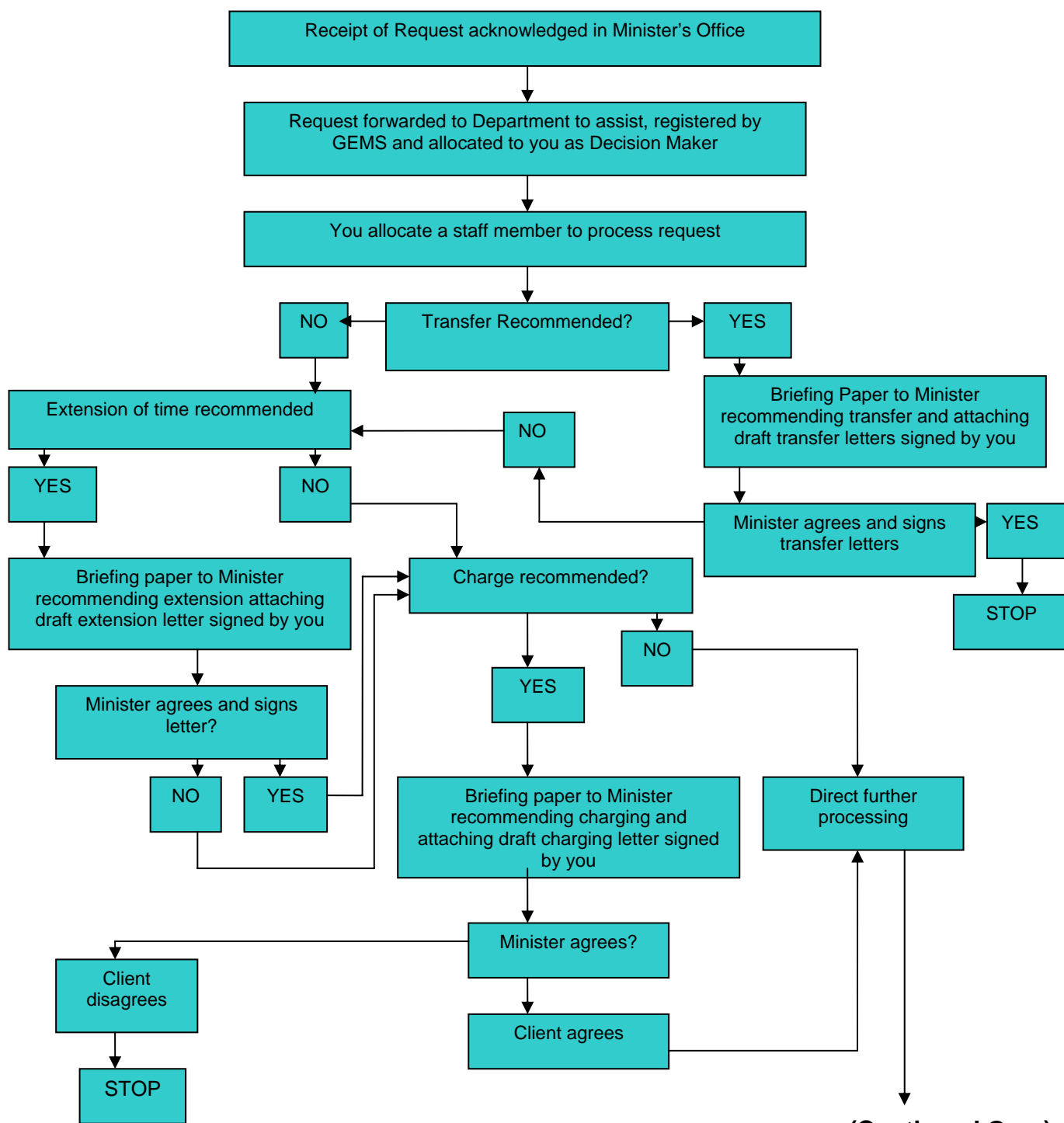
OFFICIAL INFORMATION ACT FLOWCHART 1

For 3rd Tier Managers



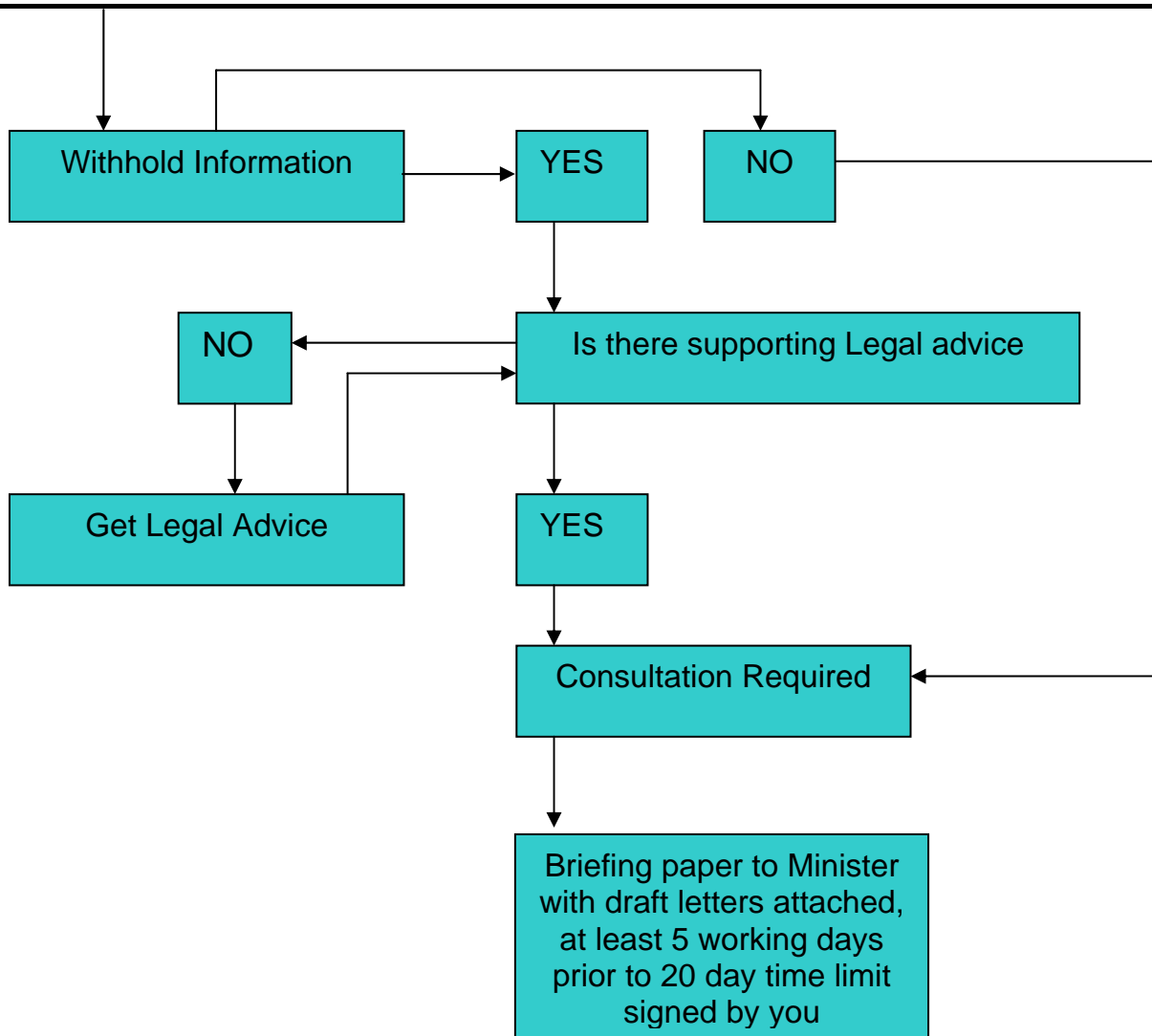
OFFICIAL INFORMATION ACT FLOWCHART 2

For 3rd Tier Managers



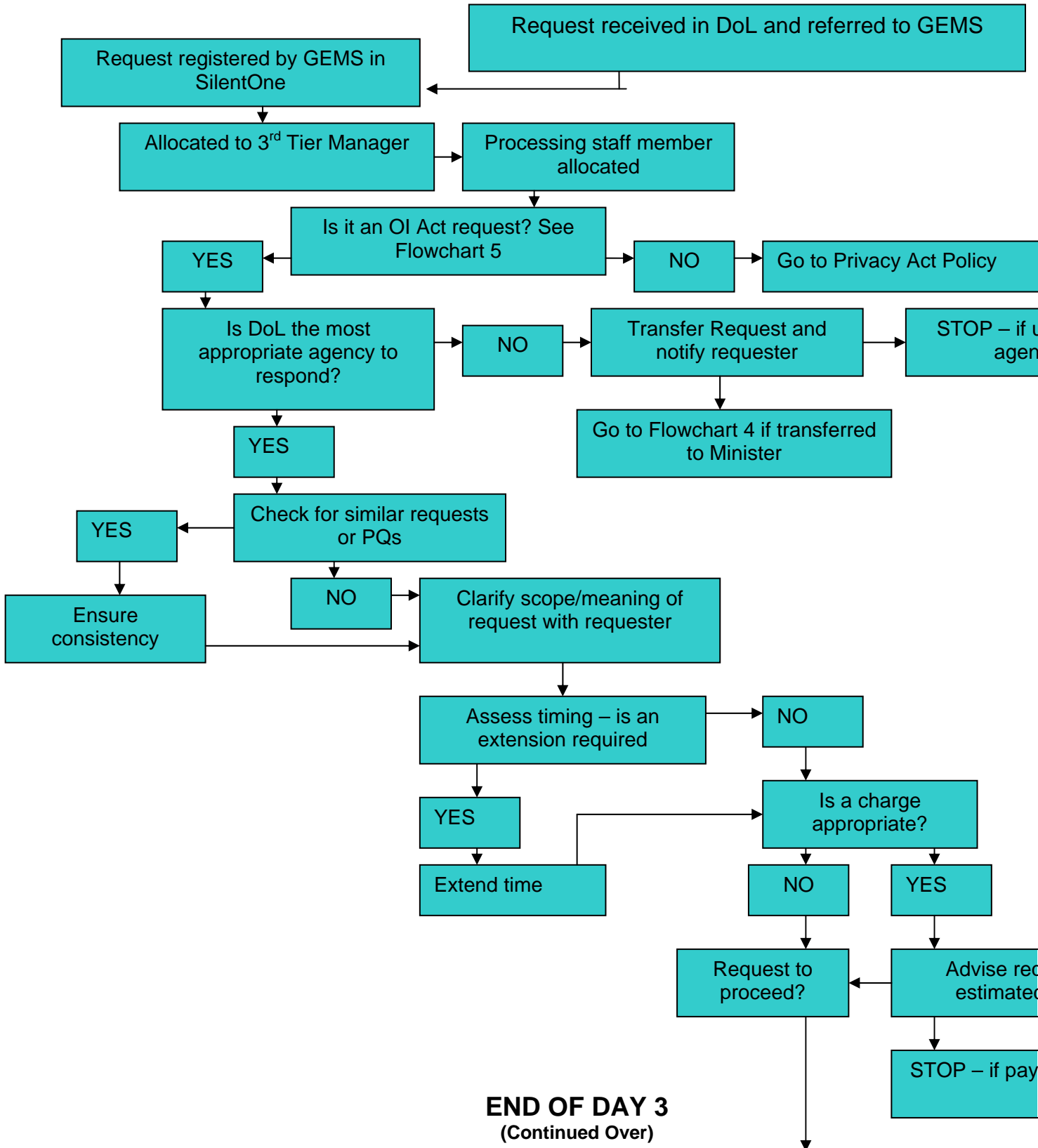
(Continued Over)

OFFICIAL INFORMATION ACT FLOWCHART 2 (Cont.)



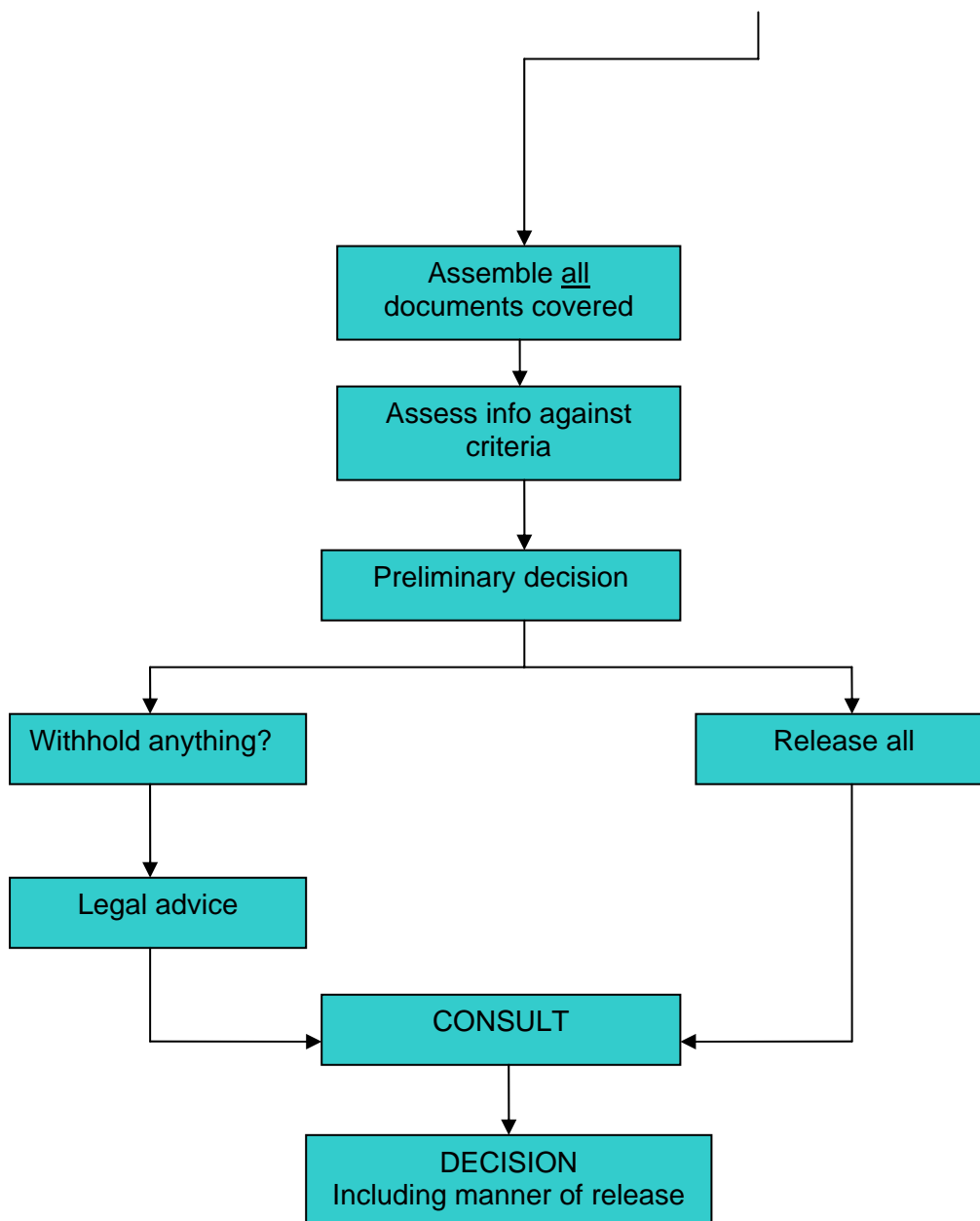
OFFICIAL INFORMATION ACT FLOWCHART 3

For 3rd Tier Managers



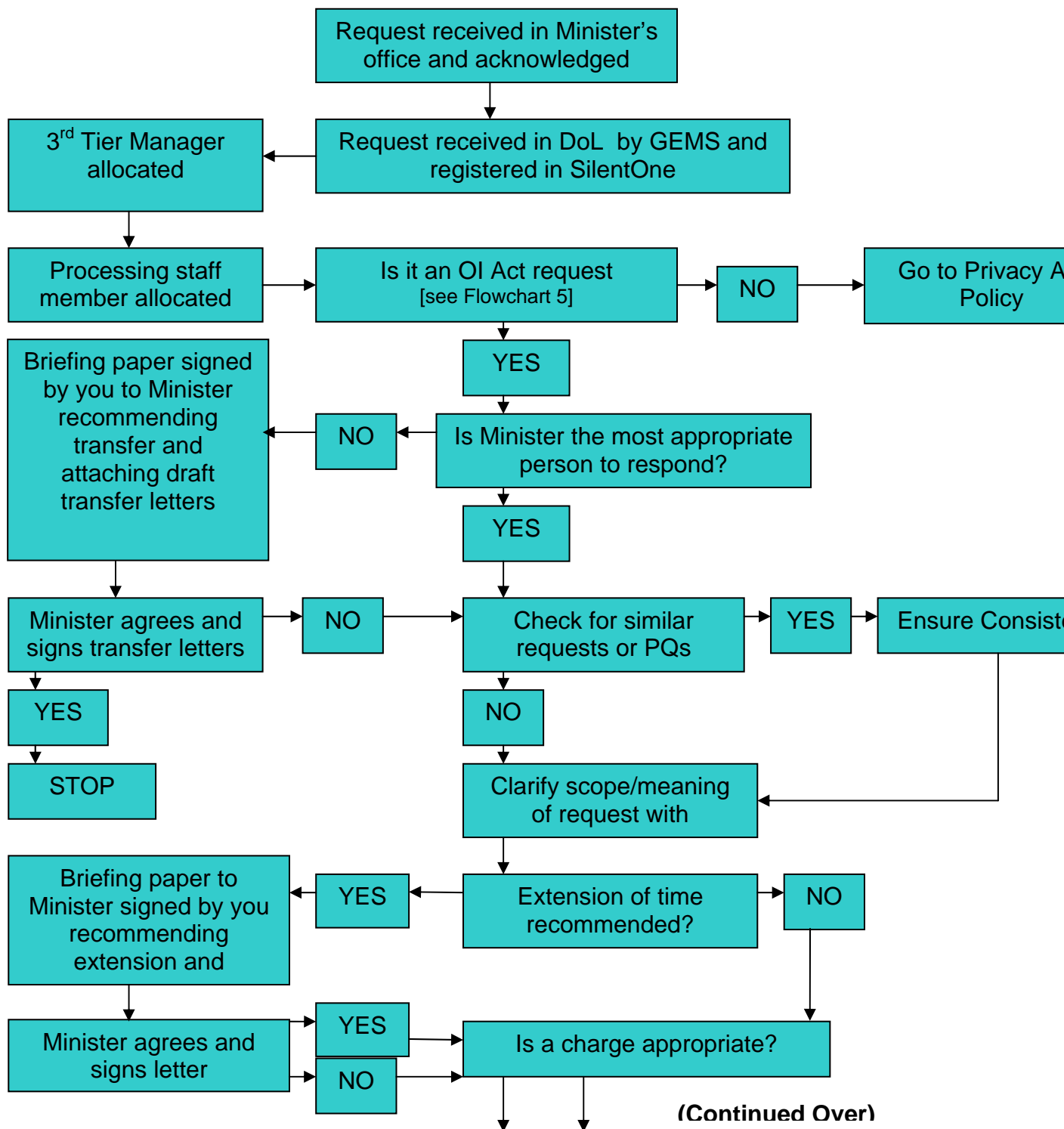
FLOWCHART 3

(continued)

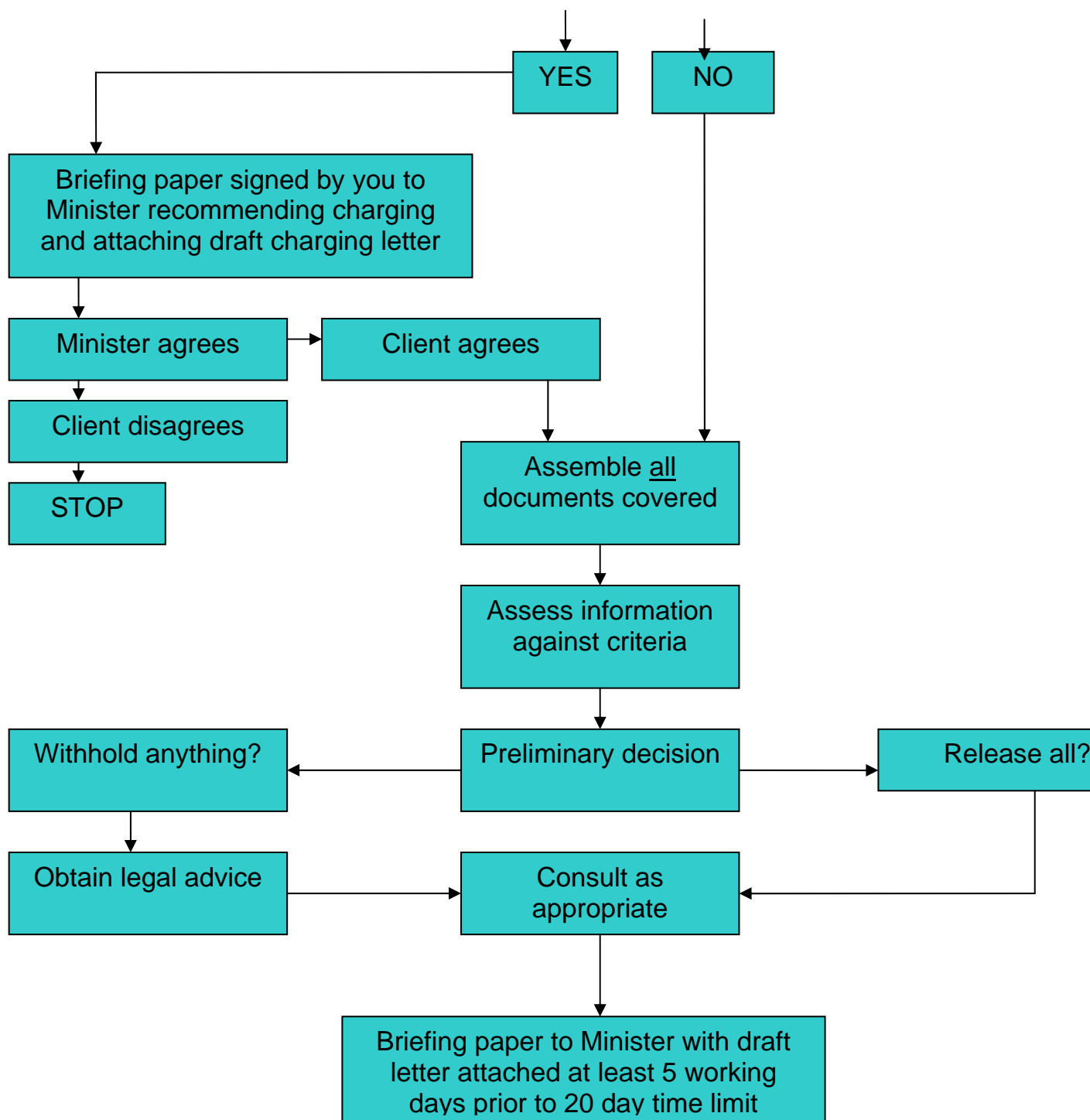


OFFICIAL INFORMATION ACT FLOWCHART 4

For 3rd Tier Managers



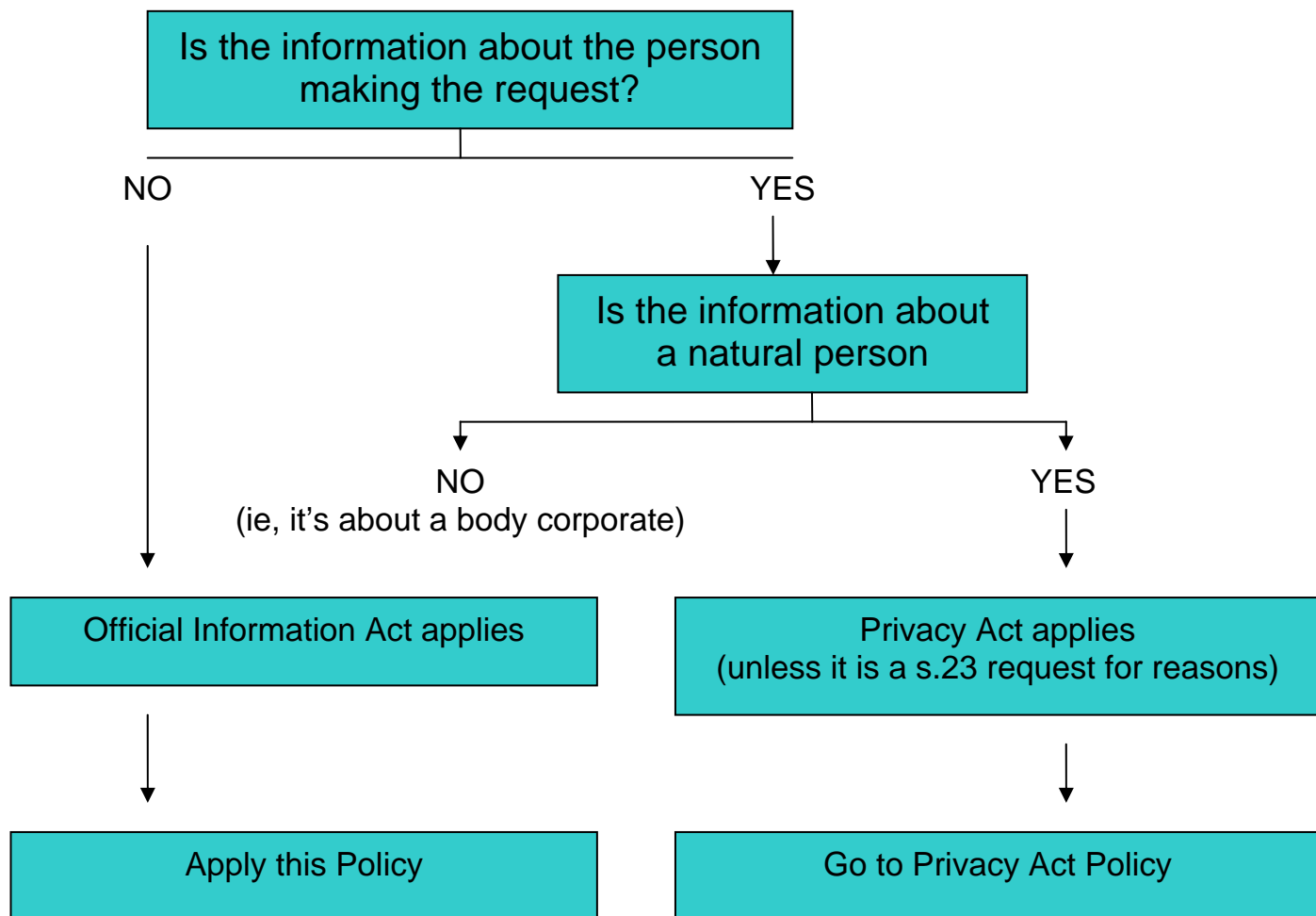
OFFICIAL INFORMATION ACT FLOWCHART 4 (Cont.)



OFFICIAL INFORMATION ACT FLOWCHART 5

CHOOSE THE RIGHT ACT - OI OR PRIVACY?

[REFER CLAUSE C.4]



A. General Information – Background

A.1 What is the Official Information Act?

The Official Information Act 1982 (“OIA”) [\[Link\]](#) turned government activities from being closed and secretive (governed by the Official Secrets Act 1951) to being open and transparent.

As the Act itself states, the purpose was to make official information more available in order to:

- enable people to participate more effectively in making and administering 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, providing for its protection when that is necessary, for example, in the public interest or to protect personal privacy.

The Department of Labour is committed to meeting its obligations under the Act and to properly providing “official information services” to those who are entitled to expect them.

A.2 What is an Official Information Act Request?

Essentially, **any** request to the Department for information can be an OIA request (Go to “Choose the right Act” [\[Link C.4\]](#) to decide whether it is an OIA request or a Privacy Act request).

- A valid request can be made orally or in writing. It is good practice to request that an oral request be made in writing. If an oral request is insisted on you should make a written record of it and the time it was made.
- **But**, where it is your job to provide information/advice to the public over the phone or by email (eg, in the ERS Infoline or the NZIS Call Centre) the requirements of your job apply instead of this Policy).
- Requesters do **not** need to mention the OIA (Indeed many refer to such things as “the Freedom of Information Act”). All they have to do is ask for information (although refer [\[Link I10\]](#) for requests under other legislation).
- The Department is **not** required to create information which doesn’t already exist.
- The Department can be required to assemble the reasons for a decision about a person and the relevant facts (s.23 – see [\[Link – Part G\]](#)).

A.3 Who can make an Official Information Act Request?

The following persons are entitled to make an official information request:

- 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 (eg, a company or a trust or incorporated society) that is incorporated in the NZ Companies Office or that has a place of business in NZ.

If a person making a request does not fall within any of those categories then they are not entitled to make the request and the Department has no obligation to provide any information.

In such a case, it is still necessary to provide a response and explain the reason for refusing the request. Even in that situation we are obliged to advise the purported requester of their right to seek a review of the refusal by the Ombudsman. [\[Link – Template 1\]](#)

A.4 What Information is Covered or What Amounts to “Official Information”?

Essentially it covers **any** information the Department has created or holds or which is held on our behalf.

That means it covers **everything** on our paper filing systems, on our electronic systems, in archive storage, and (to the extent it can be accurately remembered) any departmental information in the memory of officials that is not otherwise physically recorded somewhere. It also includes information held by independent contractors who are working on our behalf. Information they hold is deemed to be held by the Department and therefore covered by the OIA. **No categories of information or document are excluded. For example, it covers drafts!**

Importantly, too, the Act is about information, not documents, so we have to assess the various elements of a document, not just make a blanket decision about the whole document [\[Link – D3.1\]](#).

Given the comprehensive nature of the above it can be misleading to try and list types of documents. But the list below of **things that you might not think are covered** is intended to demonstrate that **everything** we have is official information:

- Drafts of papers or letters, if still held
- Emails (including those dealing with routine processes such as setting up meetings)
- Media logs
- Computer disks

- Magnetic tapes
- Notes of meetings/interviews
- Information held by an agent of the Department doing work on our behalf (eg, a consultant or contractor)
- Oral advice (whether internally or externally, such as to a Minister)
- Recollections of an un-minuted meeting
- Information provided to the Department by others
- Aides memoire
- Documents not on letterhead.

A.5 Principle of availability

The main premise of the OIA is “the principle of availability” (see **section 5** of the Act). This principle is succinct: “information shall be made available unless there is good reason for withholding it”. All decisions on whether to release information must be made with this provision in mind. The principle of availability means when in doubt you should err on the side of making the information available.

Various other interests compete with the principle of availability, for example, the need for privacy and protecting the relationship between the Public Service and Minister. These are reflected in the section on [Refusal of Requests – Substantive Reasons] [[Link – Part F](#)].

Equally, the public interest element (section 9(1)) [[Link – F3.1](#)] supports the principle and must be applied when some of those other interests might otherwise indicate a withhold decision.

A.6 Further Relevant Guidance

This Policy sets out how we in the Department of Labour **must** deal with official information requests and associated matters. It does not seek to cover every eventuality. The links below are more comprehensive.

Further material that may be relevant in particular cases can be found at:

- www.ombudsmen.govt.nz [[Link](#)]
This site contains the Ombudsmen’s Practice Guidelines. These Guidelines are comprehensive, whether viewed from the perspective of a requester or of an agency answering a request. They provide much fuller information than this Policy and, as identified in relevant parts of the text of this Policy, can be accessed in particular to provide detailed guidance about specific issues arising under the Act.
- Cabinet Office Manual [[Link](#)] www.dpmmc.govt.nz/cabinet/manual/6.html
Chapter 6 of the manual has useful material about how Cabinet documentation should be treated.

- www.justice.govt.nz [Link]
This site is particularly relevant in relation to charging for official information.
- Department of Labour Security policy [Link]
This policy is relevant when classified information is involved. Note that classified information is still official information that can be requested under the OIA. A document's security classification will generally indicate that there are more likely to be reasons for withholding the information, but all such information must still be considered according to this Policy and the OIA. Before releasing any classified information, you must seek legal advice.
- SSC Guidelines for Co-ordination [Link]
[www.ssc.govt.nz/display/document.asp?docid=1672]
These guidelines provide assistance when making decisions on whether and when it is appropriate to consult other Departments or Ministers.

The Official Information Act itself may be found at:

- Official Information Act 1982 [Link]

Important sections of that Act have their own direct link in the text of this Policy.

B. How to Approach OIA Requests

B.1 Departmental “Core Business”

The Department has a statutory responsibility as a Public Service Department to meet the requirements of the OIA.

So, meeting our obligations under the OIA is just as important to the Department as is meeting our obligations as the Department which administers such Acts as the Employment Relations Act, and the Health and Safety in Employment Act.

But more than that, we regard these obligations as another service to the public that we take pride in!

Accordingly, **staff must treat the handling of OIA requests as core business, not a chore**. This means it is of equal importance to their other everyday work, and indeed, because of the statutory timeframes and the timeframes required by this Policy, it may often have to take priority.

It also means that this Policy must be adhered to by all staff involved in actioning OIA requests so that the Department can be better assured of consistently meeting its statutory obligations and our Ministers can be assured we will assist them to meet their statutory obligations.

B.2 Duty of assistance

Under **section 13**, the Department 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 (section 12(2)) means that if the Department of Labour is unable to understand a request, or its scope seems too general, rather than refusing the request the Department must assist the requester in better defining it.

You should interpret OIA requests literally. Do not try to second-guess what an applicant might have meant to ask for, as opposed to what the request actually says. Remember too that a requester’s motive in asking for the information, or the use to which you think it might be put, are both largely irrelevant (one obvious exception to this is the “frivolous or vexatious” ground for withholding information [Link E10]).

If a request is difficult to understand or seems imprecise, **ask (and help) the requester to clarify it**. This is often best done by phone. (Keep a record of the outcome of the conversation including, for example, time, date, who rang, agreed outcome etc).

If the request covers a lot of information, and you believe the requester did not appreciate the extent of the request, you may want to seek confirmation of the breadth of the request. Often this can result in the request being narrowed. If the requester is a Member of Parliament, ask your Manager who (if anyone) is the most appropriate person to seek clarification. In some cases it may be prudent to seek clarification in writing.

This can also be an opportunity to discuss costs with the requester (see Charging for the release of information [\[Link – C14\]](#)) and to discuss whether, knowing the likely cost, they still wish to pursue the request or perhaps refine it.

These obligations and suggestions also apply to a request for reasons under section 23 [\[Link – G3\]](#).

B.3 If unsure seek guidance

Because the OIA requires a case-by-case approach, all of the general points made in this Policy may not apply in particular cases.

This Policy does not anticipate every possible circumstance that might arise in OIA cases. (The Ombudsmen's Practice Guidelines [\[Link\]](#) are much more comprehensive).

Several laws deal with information held by departments. The two main Acts that deal with access to information are the Official Information Act 1982 and the Privacy Act 1993.

The Privacy Act deals with individuals' rights of access to information about themselves. The OIA deals with access by third parties to information held by government departments, ministers, and organisations.

If ever you are in doubt about how to proceed in handling a request you should seek the assistance of your manager or team leader and, in the case of legal issues, Legal Services.

If you are proposing to refuse a request or withhold any information you **must** check with Legal Services first. [\[Link – D5\]](#)

B.4 Managing Associated Risks

While responding to requests appropriately and releasing information in accordance with the Act is important, the Department also has to ensure that the risks or impacts of releasing particular information are properly managed as well.

This will mean that the Department's No Surprises Policy [\[Link\]](#) and Media Policy [\[Link\]](#) are quite often relevant as well and need to be applied before the information becomes public.

C. Processing Steps : Days 1-3

C.1 Summary

All of these steps must occur within three working days of the request being registered as received. Registration itself must happen straight after receipt:

- Third Tier Manager assigned responsibility for request
- Choose right Act (OIA or Privacy Act)
- Decide who holds information
- Transfer request (or part of it) where appropriate
- Check to see whether any similar requests to DoL, to Minister, or to other agencies
- Clarify scope/content with requester if necessary
- Assess time required to answer
- Extend time if 20 working days not sufficient
- Assess likely cost
- If cost significant, ensure requester agrees to meet cost.

C.2 Registering Request

All Offices (local and national)

Any request received must be forwarded to GEMS to be logged in the Department's Silent One system as soon as it is received in the Department, and then allocated by GEMS.

What is GEMS

GEMS is the Unit within Executive Branch which centrally manages the Department's interface with Ministers, Parliament and the public in terms of formal communications.

GEMS email address is [\[Link\]](#) and telephone contact is (04) 915-4744.

C.3 Decision Maker

The OIA requires any decision to withhold or release information or to extend time to be made by a "decision maker authorised by the Chief Executive to make such decisions". The Department also requires that transfer decisions be made by such authorised persons.

The Chief Executive has authorised only persons in second and third tier management positions to make such decisions.

The Chief Executive has also directed that managers at that level must also make any decision to extend the time for answering a request.

The authorised decision maker is responsible for ensuring, in relation to any particular OIA request, that the requirements of the Act, and of this Policy, have been met.

The decision maker must sign any letter going to the requester, whether to release or withhold or a mixture of both, to extend the time, to transfer the request or to propose a charge for responding.

C.4 Choose the Right Act – OI or Privacy

When you get a request for information you have to decide whether it is an official information request or a privacy request or propose a charge for responding.

The difference is important because different rules apply.

To decide which Act applies, see [\[Link – Flowchart5\]](#)

- The Official Information Act deals with any official information, which includes information about a company or other body of persons.
- The Privacy Act deals with information about any natural person, other than a deceased natural person.

SO...

- ◆ A request for information by a company for information about itself is dealt with under the Official Information Act (Sections 24-27).
- ◆ A request by a person for personal information about another person also falls under the Official Information Act.
- ◆ A request by a natural person for personal information about themselves is dealt with under the Privacy Act ([\[Link\]](#) to DoL Policy).

BUT...

- ◆ A request by a person for reasons for a decision made about themselves is dealt with under the Official Information Act (s.23) whether it comes from an individual or a company [\[Link – Part G\]](#).

Sometimes the requester mentions one of these Acts in the request. That will not be definitive. Our duty is to decide which Act is properly applicable and this may mean that:

- Even if the Privacy Act is referred to it may be an OIA request (see Flowchart 5 above).
- Even if the OIA is referred to it may be a Privacy Act request (see Flowchart 5 above).

- Even if neither Act is referred to, the request must be dealt with under the relevant Act and policies.
- One request may require some aspects to be dealt with under the OIA and some under the Privacy Act. (For example, an injured employee might ask for a copy of the report of the interview she had with the Inspector (Privacy Act – information about her) and the Department’s file on her employer (OIA – information about the company).) A template letter for this sort of situation can be found at [\[Link – Template 2\]](#).

C.5 Transfer Request (or part of it) where appropriate

The decision about whether to transfer a request (or part of it) must be made by reference to the issues dealt with below. It should also generally be made at the beginning of the process, and thus within the first three working days after the receipt of the request. (The Act itself requires a maximum of 10 working days). [\[Link C9 – Templates 3 and 4\]](#)

Section 14 of the OIA provides that requests may be transferred where the information is either:

- Not held by the Department (or the Minister), but is believed to be held by another Minister, government agency or local authority; 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.

This provision, together with the duty of assistance [\[Link – B2 and C13\]](#) means the Department should ***always*** transfer the request when we do not hold the information requested but believe it may be held by another party who is subject to the OIA.

This preliminary decision needs to be made whether the request comes direct to the Department or whether it comes to us as part of the process for preparing a response to a Ministerial correspondent (for example, the Minister’s appropriate response may sometimes be to transfer the request to the Department).

Just because the Department physically holds the information isn’t enough to answer the question.

More often than not if the request is for Cabinet papers or for briefings to an Minister then the request needs to be transferred to the Minister.

If we created the information as part of our normal day-to-day operations (for example in investigating a workplace injury, or processing an Immigration application) then the request should generally be processed within the Department.

If we created the information on the Minister’s request, and for the Minister’s signature, then we may need to transfer the request to the Minister’s Office.

In practice, section 14 also means that requests should usually be transferred in the following situations:

- **When the Department only holds documents that were authored in another agency**, or which are properly the information of such an agency and have been given to us by that agency.

You may wish to consult with the original agency as to which agency should progress the request.

- **When the Department holds information that it believes to be more closely connected with the functions of the Minister** [[Link – C5](#)]

Sometimes the information requested may be a mixture.

- SO...**
- ◆ If the information is more closely connected with the Department, the Department must answer the request in its own right (but may in some cases consult the Minister or another agency) (see [[Link – C6](#)]).
 - ◆ If the information is more closely connected with the Minister’s functions, the Department should transfer the request to the Minister (but then continue to support and advise the Minister in answering it).
 - ◆ If the information is partly connected to the Minister and partly connected to the Department,, that part of the request that is connected to the Minister must be transferred to the Minister (on the same basis as above).
 - ◆ If the information is , more closely connected to another government agency, the Department should transfer the request (or that part of it) to that agency.

Where it is not clear how or whether a particular piece of information is covered by the above Policy, consultation with relevant ministers or agencies will normally resolve the issue quickly.

[Section 14 requires that when you transfer a request, you notify the requester that their request has been transferred.](#) [[Link C7 and Template 3](#)].

The Department is a single indivisible entity and the transfer provisions of the Act and the consultation provisions do not cover internal “transfers” or “consultation”.

C.6 Consult where necessary

On some occasions at this point in the process it may be appropriate to consult (with the Minister's office or other agency) in order to properly decide whether or not to transfer the request.

Alternatively, the issue might be whether other agencies (or even other parts of the Department) have received the same or similar requests. It is important to ensure consistency of approach in answering such requests. [\[Link C8\]](#)

If there are similar or related requests within this Department one coordinated response should be given with one manager taking lead responsibility. [\[Link – C8\]](#)

C.7 Implications of Transfer decision

If the request is transferred **to another Government agency** then our responsibilities in respect of that request will generally cease (although we may sometimes be consulted as the request is progressed).

If the request is transferred **to a Minister**:

- The Department must provide support and advice to enable the Minister to respond to the request.
- The Minister is the one who decides whether to withhold or release the information.
- If there is a complaint to the Ombudsman the Minister (with our assistance if requested) deals with the Ombudsmen's Office.

If the request is **not transferred**:

- The Department must make a preliminary decision to withhold or release the information (see [\[Link D4\]](#)).

The released information will often (see [\[Link D6\]](#)) be provided to the Minister's office before it is actually released so the Minister is aware of what information is going into the public arena.

The decision whether to transfer a request (or part of a request) is the Department's – no other agency can require us to transfer the request if we don't believe there are valid reasons for doing so under the Act.

Note that the Department's decision to transfer a request can also be the subject of an investigation by the Ombudsmen. The investigation would consider the reasonableness of the transfer and our compliance with the requirements in section 14.

The practicalities of transferring a request are as follows:

- A letter to the requester [\[Link to template 3\]](#)

- A letter to the person or agency to whom the request is being transferred [\[Link to template 4\]](#).

C.8 Check for other similar requests

Sometimes the nature of the request to a national office will suggest that it might be a standard request made to more than one part of the Department, to more than one Government agency, or a request made in other ways through the Parliamentary system. It is important in such cases to ensure that answers are coordinated and consistent.

Firstly, to check within the Department, an email group of authorised decision-makers is available under the title “OIA Decision Makers”.

Secondly, the Ministers’ Offices may have information about other similar requests.

Also, check the Departmental logging system for Parliamentary Questions (PQs) to see whether a PQ has been asked on the topic.

If there are similar or related requests within this Department one coordinated response should be given with one manager taking lead responsibility.

C.9 Timing Obligations

The OI Act contains certain requirements about how soon any request has to be answered. To ensure the Department meets those timing obligations this Policy sets some additional processing times, particularly for the first three days after the request has been received [\[Link – C12\]](#).

The **general statutory obligation** is to answer all requests “as soon as reasonably practicable”. That means getting on with processing it as an important part of your job – not putting it off until the last minute.

The **default statutory obligation** is to answer it by giving or posting the answer to the person **at least within 20 working days**. But where the Minister’s office is to see the final decision made by the Department, and the information to be released, a copy of the response must be in the Minister’s office no later than 15 working days after receipt.

If you are going to need more time and have **to extend** the timeframe, the Act gives 20 working days to notify the requester of the extension of time [\[Link – C11\]](#) and the new timeframe, but this Policy requires it to be done **in 3 working days**.

If you are going **to transfer** the request to another agency or to a Minister you have a statutory maximum of 10 working days to notify the requester that the request is being transferred [\[Link – C5\]](#), but this Policy requires it to be actioned **within 3 working days**.

If you **receive a request that is transferred** from another agency or a Minister you have a maximum of 20 working days (from when this Department receives the request on transfer) to respond.

If this Department is **actioning** the request **on behalf of a Minister** this Policy requires the response to be in the Minister's office for consideration **no later than within 15 working days** of the Minister receiving the request. (This is to enable the Minister's office adequate time to consider the suitability of the proposed response and to make or require any changes while still meeting the 20 working days obligation). A similar timeframe is required for Departmental requests that involve consulting the Minister.

If the requester indicates the request is urgent you are entitled to ask for supporting reasons. Those reasons need to be assessed on a case by case basis in determining how the needs of the requester can be met, remembering that the obligation is to answer the request as soon as **reasonably** practicable. In other words, what is reasonable must take account of both the practicalities for us and the needs of the requester.

If we can't meet the urgent timetable expected by the requester we should explain why. Alternatively you may want to consider splitting the response – releasing some information as a matter of urgency, and following up with the remainder of the information within the normal time limits.

C.10 How to count time

Time limits are expressed in “working days” – any day that is not a Saturday, a Sunday, a public holiday, or a day between 25 December and 15 January inclusive. However, note that Anniversary days (e.g. Wellington Anniversary Day) are not included in the list of public holidays, so must still be counted as a “working day”.

To count working days available, day 1 is the first working day after the day on which the request is received.

So, if a request is received on a Monday, the last and 20th working day available to send out the response is the 4th Monday after that (unless a public holiday or the Christmas holiday period adds some time to the deadline).

If a request has been made orally, then later confirmed in writing, you must count the working days from the date of the oral request, not from the receipt of the written confirmation.

Where finalising action on the request is contingent on the requester paying the charge indicated or agreeing to do so, any time spent waiting for payment or agreement to pay extends the maximum 20 working days available to respond to the request.

C.11 Extension of time limits

Under **section 15A**, the 20 working day time limit for actioning a request or the 10 working day time limit for transferring a request may be extended if:

- The request is for a large quantity of information, or a large quantity of information must be searched, **and** meeting the original time limit would unreasonably interfere with other work, or
- Any consultations (with external agencies or a Minister) necessary to make a decision on the request cannot reasonably be made within the original time limit.

Any extension must be “for a reasonable period of time having regard to the circumstances”. Although the Act provides that it must be made by giving or posting notice of the extension to the requester within 20 working days of the original request at the latest, refer to the requirements of this Policy [[Link – C9 and C12](#)] which seek to have such extension decisions made in the first 3 days.

Notification of time extensions must specify:

- The length of the extension
- Reasons why the deadline is being extended; and
- The right to complain to the Ombudsman about the extension.

Make sure that the extension will allow you sufficient time to collate the information and undertake all necessary consultation. You cannot further extend a time limit if you have already extended it.

A template letter for notifying an extension can be found at [[Link –Template5](#)].

C12. Key time obligations

- This Policy requires extension and transfer decisions to be made **within 3 working days** of receiving a request.
- The general obligation for answering a request is to respond “**as soon as reasonably practicable**”.
- Ministerial responses, and other responses that are to be seen by the Minister’s office, must be in the Minister’s office for consideration at the latest **within 15 working days**.
- Other final responses must be sent at the latest **within 20 working days**.

C.13 Clarify scope/content with requester if necessary

This is a crucial step which is an investment in efficiency and clarity. **Ask (and help) the requester to clarify** the scope or content of the request if it is not clear. For example you could —

- Tell the requester what types of information we hold on a particular matter
- Describe the different functions of different parts of the Department that are likely to hold information on the subject matter
- Identify documents by name

- Describe the process to which the information requested relates (eg, “then the proposal was signed off by Cabinet – would you like to request a copy of the Cabinet paper?”)

[\[Link to Duty of Assistance – B2\]](#)

C.14 Charging for the release of information

C.14.1 General

Section 15 allows agencies to fix a charge for the release of official information. Any such charge “shall be reasonable and regard may be had to the cost of the labour and materials involved in making the information available”. Any costs incurred in order to meet a request for urgency can also be recovered.

Responsibility for deciding on whether or not to charge lies with the relevant person authorised to decide the request.

This Policy requires the question of charging to be addressed at the beginning, at least within the first 3 working days.

You must not charge for information without advising the requester ahead of time that this is to be done. First, it is poor public relations to charge without notice. Second, if the person decides not to pay, then time and other resources may have been wasted. All advice about the charge should explain how it is estimated or calculated.

You should not charge more than any estimated charge you advised in advance.

You must also inform the requester of the right to complain to the Ombudsman about the charge or estimated charge.

You cannot advise that the charge **will be made** unless and until you have decided that at least some information will be released. That is because the legal authority to charge in section 15 is limited to actual and reasonable costs of making information available. You can and should, however, indicate early on that a charge **may** be made and wait for the respondent’s decision before proceeding.

As an alternative to charging, you could also consider providing the information in an alternative form (for example giving electronic copies by email or disk) or allowing the requester to inspect the original documents, if providing copies of the documents would require a lot of photocopying. Note that we can refuse to provide information in the form sought (eg, copies) if to do so would “impair efficient administration” [insert cross-reference]. You may also want to consider if the charge should be waived or reduced, for example if to do so would be in the public interest. The Ministry of Justice guidelines on charging for official information provide more detail about when to charge, how to notify of the charge etc. [\[Link to website\]](#)

C.14.2 Relevant Considerations

Work on the request may be suspended pending receipt of the charge, or agreement to pay the charge, and the 20 working day limit is extended accordingly.

The following points should be taken into account in deciding whether and how much to charge:

- **No charge can be made for time spent considering whether to withhold or release information, ie, assessing the information, but the costs of compiling the information are chargeable.**
- There is a protocol that normally charges will not be made for responding to a request by, or on behalf of, a Member of Parliament. But if large and expensive requests are made from this source you should seek to ensure the request is made with due particularity [[Link B2](#)] and if the request remains large the reasonable charge may be levied.
- The first hour spent on a request is to be free of charge.
- Subsequent time may be charged at the rate of \$38.00 (including GST) per half-hour or part thereof. That rate applies regardless of the seniority of the staff member handling the request.
- The first 20 pages of photocopied material are free of charge.
- Subsequent pages may be charged at the rate of 20 cents (including GST) per page.
- Any other direct costs incurred (eg, copying of maps/plans – or any other documents larger than foolscap size, videos, computer time/discs etc) may be charged up to their actual cost. This includes the retrieval of information off-site, reproducing audio or visual recordings, and other situations where a direct charge is incurred.
- Any charge should be reasonable and be in proportion to the amount of information released.
- No charge should be made for time spent on a request where no information is finally released. This applies whether the information could not be found, or whether it was withheld under the OIA provisions.
- The charge may include time spent searching indexes to establish the location of the information, physically locating and extracting it, (unless the Department has not kept the information in an easily locatable place), and supervising the requester's access to the information.
- No charge should be made for time spent finding material that is misplaced.
- The physical editing (after decisions to withhold have been made) is part of making the information available and is subject to charge.

C.14.3 Process

Where a charge in excess of \$76.00 is likely to be levied you may either:

- Require that an estimated charge be paid in full in advance
- Require that an estimated charge be paid in part in advance. You can then either:
 - present an invoice when you provide the information; or
 - require the full charge to be paid before you provide the information.
- Ask the requester for an assurance that they will meet the estimated charge. You can then either:
 - present an invoice when you provide the information; or
 - require the full charge to be paid before you provide the information.

Whichever of these steps is to occur, if any, is to be decided within the first 3 working days.

C.15 Acknowledgement

At the end of the three day period mandated by this Part of this Policy the processing staff member should prepare an Acknowledgement Letter [\[Link – Template 6\]](#) to the requester for signature by the relevant Manager. Obviously you need not send an Acknowledgement Letter if you have already responded in full to the OIA request!

The purpose of the letter is to:

- Demonstrate that the request has been received and is being actioned.
- Provide access to a contact point in the Department.
- Confirm any discussions that have already occurred with the requester
 - about the scope or content of the request
 - about estimated charges
 - about proposed timing.

D. Subsequent Processing Steps

D.1 Summary

The following steps must **always** occur:

- Assemble all the actual information (unless you propose to refuse the request on the grounds that complying would require “substantial collation and research”) [\[Link E8\]](#)
- Assess the information against the Act’s criteria
- Make a preliminary recommendation – withhold or release
- Get legal advice if withholding contemplated
- Consult where appropriate
- Third Tier Manager or above makes final decision
- Consider appropriate manner of release.

Separate Flowcharts [\[Link Flowchart 1\]](#) describe (for both processing staff and managers) how the following steps occur in the case of:

- A request made or transferred to a Minister
- A request to the Department.

D.2 Assemble all Information

Unless the magnitude of the task of assembling the information requested would in itself provide a good reason to withhold, it is not possible to make a proper decision about whether to release or withhold any information without having it all in front of you to assess.

This means that you should **always** start by assembling all the information that is sought by the requester.

To assemble the information you need to know where to look, who to ask and how to ask. If you are not too familiar with the type of information requested you need to get advice on these matters from someone who is. Or perhaps someone else should be actioning the request?

Finding and assembling the information will be a different experience each time, depending on the nature of the information sought. Sometimes the information will already be assembled, in the sense that it will all be stored on the same file. Sometimes it will all be held within the same work group. But sometimes it may be held in a number of places or groups and you need to be able to identify where or who they might be.

It is a key responsibility of the manager (or other authorised decision maker) involved to make sure that this aspect of the process is systematically and thoroughly completed.

Depending on the circumstances some of the following tips may be relevant:

- **Where to look?**
 - Hard copy files are obvious, but don't forget email folders and other electronic document storage places. Also, sometimes staff have their own files of information before it gets put into the formal records system.
- **Who to ask?**
 - In a Department with as many different, but often connected, interests as ours you need to think about whether colleagues in other areas may have related information, eg, information about sweatshop activities might be found in the Labour Inspectorate of ERS, the health and safety Inspectorate of OSH, and the Immigration Service, as well as in relevant national office areas such as International Services. Don't assume you're the only source!
- **How to ask?**
 - You should not use a scatter-gun approach, but email can often be the most effective way to get to a diverse group of people. Make sure you quote the request, rather than paraphrasing it in your own words! And make sure you ask people to give you a "nil return" where appropriate so that you can be sure the request has been actively considered.

Finally, note that sometimes we know that the information exists but we just can't find it. This is usually a case of the hard copy file being misplaced.

The Act envisages this situation and provides a basis (in section 18(e)) for refusing that part of the request – on the basis that the document that is alleged to contain the information cannot be found. [\[Link to Part E7\]](#).

Also, remember that a request may cover information that has not yet been written down, but which an official remembers. In such a case it is often easiest to ask the official to write it down so that it can be assessed.

D.3 Assess the Information

D.3.1 Information, not documents

The crucial thing to remember at this stage is that you are assessing information, not documents. Documents contain information, but each part of a document may have to be treated differently, and so must be assessed in its own right.

So, for example, a single document might contain information needing to be protected for privacy reasons, legal advice needing to be protected to maintain legal professional privilege, and free and frank expression of opinions. But the information contained in other parts of the document, if it doesn't attract those same protections or any other relevant protections, will need to be released.

Remember too, that different drafts of a document may each contain different information, for example what amendments were made, by whom and why. Just providing the final version of the document will not be enough if the requester has requested “all information” on the topic contained in the documents.

D.3.2 Presumption of release

The Act’s purposes focus on availability of and access to information, but recognise the need for protection in the public interest or for privacy reasons (section 4). The Act also espouses the principle of availability – release unless good reason to withhold (section 5).

So this Department approaches all requests from the presumption that information will be released unless there is a good reason to withhold. In other words, you should not embark on the assessment from the point of view of looking to withhold.

D.3.3 Applying the Act’s criteria

Decisions about withholding information can only be made with reference to the reasons or criteria listed in the Act.

There are two types of reasons:

- Those categorised in Part E of this Policy as “**Administrative Reasons**” [[Link Part E](#)]. These relate to such things as imminent public availability, the necessity for substantial collation or research, or the inability to find the information (section 18).
- Those categorised in Part F of this Policy as “**Substantive Reasons**” [[Link Part F](#)]. These are the ones that deal with situations where there are conclusive or good reason for withholding information (section 6 and section 9).

The various reasons in those two categories can range from the reasonably straightforward to the complex. Parts E and F of this Policy are to help you understand and apply the relevant reasons in a way which is consistent across the Department.

Each part or element of the information must be assessed in its own right.

D.4 Making a Preliminary Recommendation

Following the assessment of the assembled information you should then decide what you think should happen – should the information be released or withheld, or a bit of both?

Depending on the working arrangements in your office, you may need to discuss your preliminary recommendation with your manager or team leader.

D.5 Get Legal Advice if Withholding

This Policy requires every withholding decision to be supported by legal advice. So, once you have made a preliminary recommendation to withhold any information you must refer that recommendation to Legal Services. Any such referral must:

- Be made on the Request for Legal Services form [\[Link\]](#) (which means it must)
- State your (reasonable) deadline for legal input
- Be accompanied by a copy of the request and of the actual information that is proposed to be withheld
- Identify the withholding reason or reasons that you think applies to that information
- If it is not obvious, provide an explanation of why you think the relevant withholding reason applies to the information.

D.6 Consult Where Appropriate

If you think that a Minister or other agency or individual might have an interest in the way you are answering the request, particularly if you are releasing information in which they may have an interest, you should consult them about your proposed response to the official information request. This should occur as soon as you reach your preliminary recommendation. Consultation with the Minister will be the norm for most Head Office requests and may also be required for some requests at a local level, particularly if the requestor is from the media.

Cabinet Office needs to be consulted **only** if Cabinet papers of a previous Government are covered by the request. [\[Refer Cabinet Office manual, paragraphs 6.68 and 6.69 for process and format\] \[Link\]](#)

The purpose of such consultation is to hear the views of the person or agency approached, so that should be clear when you approach them. They should not be given the impression that they have any opportunity to veto release of any information. Their views will be considered in making a final decision.

The point of such consultation is to ensure that all relevant factors have been taken into account when the final decision on the request is made. It recognises that we may not always have all the relevant information within the Department.

After the consultation, decide whether any change to your preliminary recommendation is necessary.

If a change is to be made, is it of such an extent that legal advice needs to again be sought?

Record all these steps, and what your preliminary recommendation is, for the final decision maker to consider.

D.7 Final Decision

The final decision **on any request to the Department**, whether to release or withhold or a bit of both, **must be made** by a 3rd Tier Manager or above.

If the request was made or transferred to the Minister, then the final decision should be made by the Minister and not the Department, but the decision about what advice is given to the Minister must be made by a 3rd Tier Manager.

The final decision should ensure that:

- The input from consultation has been properly factored in
- Legal advice supports any decision to withhold information
- All relevant matters are properly recorded
- The proposed decision is the correct one.

The decision maker must sign the record of the decision [[Link I.4 re record keeping](#)], and complete the Checklist [[Link](#)].

D.8 Release through Minister's Office

Many requests being answered by the Department will nevertheless involve releasing information that will be of interest to the Minister. The responsible manager needs to actively make a judgement call about whether this is the case.

The process in such cases requires a copy of the letter to the requester, and of the information to be released, to be provided to the Minister's office **at least 5 working days** before the information is proposed to be sent to the requester.

D.9 Method of Release

The letter conveying the decision **must** inform the requester of the right to seek review by the Ombudsman if we are refusing to release information (or extending time, charging, imposing conditions on the information released, or giving access to the information in a form other than that requested). [[See Template 7](#)]

Where information is being released, section 16 deals with the way in which that can occur. The starting point is to make it available in the way preferred by the requester. This will usually be by providing copies of the relevant information.

Other ways can include:

- Giving the requester an opportunity to inspect the documents containing the information
- Giving an excerpt or summary of the contents (there should be legal advice to support this approach)
- Transcript of any recording or shorthand or code
- Allowing the requester to hear or see a recording (or giving them a copy of it).

Note: The Department's requirements about keeping accurate records of what you release [\[Link – 14\]](#).

E. Refusal of Requests – Administrative Reasons

E.1 Introduction

Section 18 [\[Link\]](#) of the Act sets out most of the reasons that are available for refusing an official information request. Another reason may be found in section 12, namely, that the requestor has no right to request the information. [\[Link – A3, Template 1\]](#)

The first of those, in section 18(a), relates to the substantive reasons for withholding (sections 6 and 9) that are dealt with in Part F of this Policy.

This Part of the Policy deals with the other reasons for refusal, which are collectively referred to as Administrative Reasons.

Note that when any of these administrative reasons are used to refuse a request the requester must still be told that they can seek a review by the Ombudsman of that refusal.

E.2 Neither Confirm Nor Deny

Section 18(b) relates to the power in section 10 for an agency to neither confirm nor deny the existence or non-existence of the information requested.

This reason for refusal is used extremely rarely and in the Department may only be used if the Chief Executive or a direct report of the Chief Executive agrees. Legal advice is necessary.

E.3 Contrary to an Enactment

Section 18(c)(i) allows refusal of a request on the basis that releasing it would “be contrary to the provisions of a specified enactment”.

For the Department, this is likely to be applicable in either of the following circumstances:

- Dealings with refugee claimants – section 129T of the Immigration Act 1987 requires this information to usually be kept confidential.
- Provision of mediation services – section 148 of the Employment Relations Act 2000 specifically excludes the application of the OI Act to information generated in the course of mediation.

Where either of these sections apply the appropriate wording for the refusal letter is that “the request is refused in reliance on section 18(c)(i) because to release the information would be contrary to [section 129T of the Immigration Act 1987 / section 148 of the Employment Relations Act 2000]”.

Note that there are also some enactments which require release of information, despite what the OI Act might say. These are discussed in Part I [\[Link – I10\]](#).

E.4 Contempt of Court or Parliament

Section 18(c)(ii) deals with this possibility which could arise for example if there is a Court Order preventing release of the information. If you think this provision might be relevant discuss the matter with Legal Services.

E.5 Public Availability

Section 18(d) allows a request to be refused if “the information requested is or will soon be publicly available”.

If you are proposing to rely on this reason for refusal you should:

- Advise the requester how to access that public source of the information.
- Consider whether the publicly available source is readily accessible and not unreasonably expensive.
- Be sure that, for information soon to be available, there is some certainty about when that will be – tell the requester the date it will be available.
- Not use this provision as a means of delaying the release of the information – the public release should usually have been planned before this request was received.

Situations where this section might be applicable are:

- Where a speech containing the information is about to be delivered
- Where a report or document is being printed for publication
- Where certain documents or information are about to be, or have already been, put up on a website for public access
- Where the information is already available in a public library.

E.6 Information Doesn't Exist

Section 18(e) allows refusal of a request if the information requested does not exist.

This might seem an obvious reason – you can't give someone something that you don't have. Section 18(e) just provides the legal basis for making that refusal.

Before declining under this provision, you should consider whether it would be appropriate to consult with the requester – they may have inadvertently incorrectly worded their request.

E.7 Information Cannot be Found

Section 18(e) also allows refusal of a request if the information requested can't be found.

This will be relevant where you know or believe that the Department does hold documents that contain the information requested but you can't locate them after a diligent search.

From time to time files do get misplaced, particularly when they have to be moved between offices or sections. If the information really can't be located, the requester should be told this when the refusal is made.

A request being refused on this ground must be reported in writing by the authorised decision maker to that person's manager. This is to ensure that action to find the file remains on the agenda.

E.8 Substantial Collation or Research

Section 18(f) allows a request to be refused on the basis that "the information requested cannot be made available without substantial collation or research".

This may come into play if the request is a large one or a broadly defined one or one that is vague or sweeping. It is to help manage the administrative burden of such requests where there may not be other reasons for refusing.

If this section appears to be applicable, **the first step** should be to contact the requester to see whether the request can be re-specified and narrowed.

Whether section 18(f) does apply will depend on the particular case. You should only rely on section 18(f) if you are not able to reasonably extend the time limit or to reasonably charge for time spent. Section 18(f) should be saved only for the unusual case.

Collation and research does **not** include the task of assessing the information once it is assembled to see whether it can be released or not. Collation and research is to do with the process of assembling the information in one place in the form sought by the requester.

The requirement is **substantial** collation or research. The Ombudsman has identified the following factors as being relevant to assessing whether this test has been met:

- The amount of work involved in determining what information is covered
- The degree of difficulty in locating, researching, or collating it
- The number of documents involved
- The nature of the resources and personnel available to handle the request
- Any effect on other operations or the potential diversion of resources.

Relying on section 18(f) will mean that, having weighed up all those matters in the particular circumstances, you think that “substantial collation or research” is involved.

E.9 Not Held

Section 18(g) deals with the situation where we don’t hold the information but also don’t know who does hold it.

So it is different from section 18(e) where we are saying it doesn’t exist. And it is different from a transfer situation where we are saying we know who does hold it.

E.10 Frivolous or Vexatious

Section 18(h) allows refusal of a request that is “frivolous or vexatious”. This expression is a legal one and not necessarily one that takes an every day meaning. Put another way, this is quite a high test.

To be applicable you must be able to say that you have grounds for believing that the requester is **patently abusing** the rights granted by the legislation rather than exercising those rights in good faith. No reasonable person would see the request as having been made in good faith.

Very few cases will meet this test! It is not enough, for example, that the requester has already made numerous, time consuming requests. Those previous interactions may be relevant to a judgement about this issue but will not be determinative. Each request (rather than each requester) must be looked at on its own merits.

E.11 Trivial

Section 18(h) also allows a request to be refused on the basis that “the information requested is trivial”.

This section might, for example, be used to refuse aspects of a request that deal with administrative arrangements (eg, meetings) related to the subject matter of the request.

F. Refusal of Requests – Substantive Reasons

F.1 Introduction

This Part of this Policy does not set out to deal with all the substantive withholding reasons in detail. This is because the Practice Guidelines on the Ombudsman's Website [\[Link\]](#) already contain such detail. Also, Legal Services are available to provide advice and **must be** involved before a decision to withhold is finalised [\[Link – D5\]](#).

This Part deals generally with the approach to withholding under section 6 and section 9 and then deals briefly with those particular withholding reasons that commonly arise in the course of OIA requests to this Department.

For each of the withholding reasons, including those not dealt with directly in this Policy, the Appendix contains copies of the Ombudsman's Summary Sheet which takes the user through the logical steps in each case of deciding whether the particular section applies. [\[Link Appendix\]](#)

In all cases the exercise of deciding whether withholding reasons apply involves considering what prejudice or harm would result if the information were released and then how that prejudice or harm is protected or prevented by any particular withholding provision. For section 9 (but not section 6) it also involves considering the public interest factors, and whether they override what otherwise might be good reason to withhold [\[Link – F3.1\]](#).

F.2 Conclusive Reasons for Withholding

Section 6 [\[Link\]](#) deals with a series of reasons that if they apply will be sufficient basis in themselves for withholding. This contrasts with section 9 [\[Link\]](#) where each reason must be balanced against an overall "public interest" assessment.

In practice, two questions need to be asked under section 6:

- *How would disclosure prejudice the interests protected by subsections 6(a) to 6(e)?*
This requires identification of the nature of the prejudicial effect in this particular case and explanation of how it is anticipated it will occur.
- *Would that predicted prejudice be "likely" to occur?*
"Likely" means that there is a real and substantial risk that it will occur.

Only two of the section 6 reasons commonly arise in the context of this Department's operations.

F.2.1 Maintenance of the Law

Section 6(c) says there is good reason to withhold if the release would be “likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences and the right to a fair trial”.

In this Department, this situation tends to arise where we are investigating possible criminal activity and have not reached the stage of laying charges. But it will only provide a reason to withhold if release is likely to undermine or compromise the investigation process and thus potentially the prosecution for breach of the law.

It can also apply (in the context of the detection of offences) to protect an informant’s identity.

F.2.2 Danger to Safety

Section 6(d) provides good reason for withholding where the release is “likely to endanger the safety of any person”.

This can, for example, apply in an immigration context, particularly where a person has had a history of violence against their partner and is seeking information about what their partner has said to the Immigration Service about the person’s application.

F.3 Good Reasons for Withholding

Section 9 [Link] describes a series of reasons for withholding information that, if they apply, must then be judged against any relevant public interest considerations [Link F.3.1] to see whether those outweigh the reason for withholding.

For each of the reasons in section 9 to be applicable, the withholding must be **necessary** to protect the relevant interest. That is a high standard – not just desirable but necessary, ie, if the information is released the interest protected by the relevant subsection **will be** prejudiced.

If the public interest considerations outweigh the reason in section 9 for withholding the information should be released.

F.3.1 Public Interest Overlay

“Public interest considerations” are not the same as considerations the public are interested in. What is “in the public interest” are things that promote the overall public good.

These include, but are not limited to, some of the things identified in the purposes of the Act – more effective participation by the public in the making and administration of laws and policies, promotion of the accountability of Ministers and officials. But equally they might include situations where, if the information was not released, the public would be left with a harmful and incorrect understanding of an issue. Also, ensuring maintenance of, or respect for, the law generally or of an individual’s right to fairness may be public interest factors.

Each situation will be different and will be influenced by such things as the content of the information, the context in which that information was created and now sits, and any known purpose behind the request.

F.3.2 Protection of Privacy

Section 9(2)(a) allows withholding of information (subject to the public interest test) to protect the privacy of natural persons (including dead persons). A “natural person” is a human being, not a company or a trust.

This Department holds significant amounts of information that relate to individuals, and that automatically raises privacy questions. (Not just immigration files but also, for example, some health and safety information and information about individuals’ employment conditions).

Section 9(2)(a) applies only if the information identifies a particular person or can easily be connected with a particular person. There must be some privacy interest in the content of the information. So, for example, most often the names of senior public servants on documents such as emails or memos will not be able to be withheld because the public interest in the accountability of public servants overrides any privacy interest associated with their activities as a public servant. The Department’s policy is that generally all managers’ names will be released, but generally names of employees below manager level will be withheld (of course unless the public interest overrides their right to privacy, or if their name and involvement in the matter is already in the public domain). Personal information about employees (such as phone numbers, home addresses etc) will generally always be withheld, irrespective of the person’s seniority within the Department.

Sometimes there will be a privacy interest but the individual concerned may not wish to protect it. That is why we should generally seek to consult the person concerned.

Consent to release by the individual will be enough to mean you can’t rely on section 9(2)(a). But on the other hand the individual’s view that the information should be withheld cannot be treated as a veto on release – that (and their reasoning) is one factor to weigh up.

Also, on occasion there may have been an implied waiver of privacy interests where the individual, or their representative, has discussed the information publicly. You should not assume, though, that because a person has placed some of their personal information into the public arena, they have implicitly authorised us to release all the personal information that we hold about them. Alternatively the information may already have been placed in the public arena in some other way.

Remember too that not all of the information relating to the individual will attract privacy interests – for example, an employment agreement may contain not only personalised terms and conditions, but also quite generic and common terms, in which there can be no privacy interest.

[\[Link to Summary Sheet for s.9\(2\)\(a\)\]](#)

F.3.3 Commercial Sensitivity

Section 9(2)(b)(ii) prevents prejudice to the commercial position of persons.

This does not apply very often in relation to information the Department holds. This is because most of the commercial relationships the Department has are entered into on the basis that details may need to be supplied publicly.

This section can, however, be relevant when the Department holds information about the commercial activities of a company, for example as the result of an OSH investigation, or NZIS matter.

In such a case it is often useful to seek the company's views, so that we can then decide if releasing the information really would prejudice their commercial position. Remember though, that **we** must make that decision, and should not just accept the company's views – they can not veto the release of the information.

[\[Link to Summary Sheet for s.9\(2\)\(b\)\(ii\)\]](#)

F.3.4 Obligation of Confidence

Section 9(2)(ba)(i) protects information which:

- Is subject to an obligation of confidence
- or
- Any person has been compelled to provide under the authority of an enactment
- if
- making the information available is likely to prejudice the supply of information from the same source or of similar information

and

- it is in the public interest that such information should continue to be supplied.

Some of our Acts allow us to compel people to provide information (eg, the HSE Act).

Also, this may be another reason (to accompany section 6(c)) for protecting information from informants about illegal activity.

[\[Link to Summary Sheet for section 9\(2\)\(ba\)\(i\)\]](#)

F.3.5 Confidentiality of Advice

Section 9(2)(f)(iv) protects information in order to maintain the constitutional convention which protects the confidentiality of advice tendered by Ministers and officials.

This does not automatically protect any briefing or advice to Ministers.

The advice must be about a possible course of action, not just factual information. Forecasts, for example, do not always form part of advice on possible action but instead seek to predict a future situation. But in some situations a forecast may be an integral part of advice which in itself would indicate the content of the advice.

In general terms, the section is often relevant where there is concern that release will prejudice the ability of Ministers to **consider** advice. This is sometimes referred to as allowing “undisturbed consideration” of advice when decisions have not yet been made. But the longer the decision takes, or once the decision has been made, the less likely this section will be applicable.

[\[Link to Summary Sheet for section 9\(2\)\(f\)\(iv\)\]](#)

F.3.6 Free and Frank Opinions

Section 9(2)(g)(i) protects information where it is necessary to “maintain the effective conduct of public affairs through the free and frank expression of opinions” by or between or to Ministers or officials.

Because free and frank opinions are an expected part of the job of public servants, this is not designed to protect all such opinions. The key additional element for protection is that protection must be necessary for maintaining the effective conduct of public affairs.

Some specific harm to “the effective conduct of public affairs” would need to flow from the particular release anticipated.

One such harmful effect might be where it is generally in the public interest for free and frank opinions to be proffered but release of them would inhibit future advice in similar situations.

This will not be the norm – officials are presumed to be not likely to readily forsake their obligation to give free and frank opinions.

Section 9(2)(g)(i) does cover expression of such opinions to Ministers or officials so it can include opinions conveyed by members of the public or on behalf of an organisation.

[\[Link to Summary Sheet for section 9\(2\)\(g\)\(i\)\]](#)

F.3.7 Legal Professional Privilege

Section 9(2)(h) protects information in order to maintain legal professional privilege.

In a general sense, the recipient of legal advice is entitled to decide whether anyone else should have access to it. The Department holds a significant amount of information that is legal advice, so careful judgement has to be made about whether it might be in the public interest to release it. Legal professional privilege not only applies to legal advice you have received, but also to your communications with a lawyer for the purposes of seeking legal advice. It also applies to information gained in preparation for proposed litigation.

You must always seek legal advice before releasing anything that might be covered by legal professional privilege.

Often release might compromise the position the Department seeks to take on a particular issue, or put a Court case or contract at risk. That needs to be weighed against the public interest.

[\[Link to Summary Sheet for section 9\(2\)\(h\)\]](#)

F.4 Requests by Companies for Information About Themselves

If a **company** asks for **information about itself** it should to be dealt with under sections 24 to 27 [\[Link\]](#).

Section 27 incorporates, as potential reasons for withholding information, most of the section 6 reasons and section 9(2)(b), as well as legal professional privilege. But on top of those there are two additional reasons that apply in this situation:

- Disclosure would involve the unwarranted disclosure of the affairs of another person.
- Disclosure would breach an express or implied obligation of confidence in relation to evaluative material (in short, this is material about suitability of a person for a contract, award, other benefit, or insurance).

The importance of recognising when section 27 applies (instead of the direct application of section 6 or section 9) is that where a company is seeking information about itself all of the other section 9 reasons (other than the ones mentioned above, ie, s.9(2)(b) and s.9(2)(h)) cannot be applied. In other words, companies have stronger rights to information about themselves than any third party might have.

F.5 Unacceptable Reasons for Withholding

The following things are **not** reasons in themselves for withholding information:

- That the information requested is a draft paper
- That the information was created by, or provided to the Department by, a third party
- That release of the information might be embarrassing for the Minister or the Department
- That the information is politically sensitive
- That another Department or a Minister has vetoed its release for reasons we don't accept as valid under the OIA.

(Note that there may be reasons for withholding the information but they must be reasons provided for in the Act.)

G. Requests for Reasons – Section 23

G1. Introduction

Section 23 of the OI Act establishes a separate code for disclosure to individuals of reasons for decisions that an agency such as ours may have made about them.

The reasons that they are able to access are in the form of:

- The **findings on material issues of fact**
- A reference to the **information on which those findings were based**
- The **reasons for the decision or recommendation.**

Unlike other parts of the OI Act, s.23 actually entitles the requestor to require us to create information in a particular form.

If we don't hold the information in the form described in the previous paragraph then we are required to assemble it or write it down in that form.

G2. Who can ask for reasons?

The starting point is that there must have been a **decision** or **recommendation** made by the department about the person.

Secondly, the person must be either —

- (a) a NZ citizen; or
- (b) a permanent resident; or
- (c) an individual who is currently in NZ; or
- (d) a company or trust incorporated in NZ.

G3. Departmental Obligations

The Department still owes the duty of assistance to the requestor [[Link – B2](#)]. Talk to the requestor if you aren't clear about what decision or recommendation they are talking about.

Transfer rules [[Link – C5](#)] and timing obligations [[Link – C9](#)] also apply as normal to section 23 requests.

As well, if we refuse to answer the request in any way (see below) we must give reasons for that and must notify the requestor of the right to seek a review of our refusal by the Ombudsman.

G4. Ability to refuse request

Some particular reasons for refusing to provide one aspect of the reasons (the information on which the decision or recommendation was based) can apply by virtue of section 23(2A).

This subsection is quite detailed, but in summary the reasons for refusal include:

- That there would be a breach of confidentiality around evaluative material (being material about suitability for employment or about the awarding of contracts or other benefits).
- That after medical advice, we are satisfied that releasing the information would be likely to prejudice the physical or mental health of the requestor.
- For a person under 16, that disclosure would be contrary to their interests.
- For a convicted or detained person, that disclosure would be likely to prejudice the safe custody or rehabilitation of the person.

G5. Manner of conveying information

A request under section 23 should be answered in the format shown in Template 10.

G6. Legal Advice

You are likely to receive a request under section 23 when the requestor is considering whether to challenge your decision or recommendation in some way. This will often mean that some manner of legal proceedings are being contemplated against you or the department.

In such circumstances it is advisable to seek legal advice about the way you are proposing to answer the s.23 request, even if no refusal of information is involved. This is because what you say in your reasoning will become the basis for challenging your decision, particularly if it doesn't match what else is already on your file about the decision.

H. Review by the Ombudsman

H.1 Introduction

Requesters have the right to complain to the Ombudsmen about:

- Any refusal to release official information (which may also arise where a response is perceived by the requester as incomplete).
- The fact, and amount, of any charge for releasing official information.
- A decision to extend the time available for responding to a request, including the length of the extension.
- A failure to comply with time limits, which is deemed to be a refusal to release.
- A decision to impose conditions on the use, communication, or publication of information made available under the Act.
- The form in which information has been released to the requester ie, if we have not provided the information in the manner requested.

This Part of this Policy deals with how the Department is to participate in, and co-operate with, the review by the Ombudsman.

H.2 Ombudsman's Process

When the Ombudsman receives such a complaint he then writes to the Chief Executive outlining the nature of the complaint and the details known to him through the complainant.

He will usually ask for the following things to happen:

- That we provide him with copies of all the information requested (ie, anything released or withheld in response to the request).
- That we provide him with any papers/information relevant to our initial decision on the request.
- That we explain the basis upon which we withheld any information (or, as the case may be, why the time limit has been extended, or why a charge was imposed, or how the charge was calculated). More particularly in this regard he asks us to focus as precisely as possible on the prejudice or harm that we believe would be likely to result if the information were disclosed, and how that prejudice or harm is protected by the withholding provisions we have relied on.
- That we inform him whether any third party was consulted and, if so, whether they had any separate concerns about disclosure.

Usually the Ombudsman expects to receive copies of all of this information as soon as practicable, but will specify a maximum timeframe of 20 working days. Extensions to that timeframe can be negotiated in appropriate circumstances (eg, where the issues are complex and/or require further consultation). Such extensions should be sought **before** the expiration of the maximum timeframe.

After considering the written material provided by the Department the Ombudsman may sometimes request a meeting to discuss the matter but more usually will arrive at a provisional opinion about whether the complaint has any merit.

Generally, if the Ombudsman's provisional opinion is that we have made a correct decision the complainant will be advised of that and asked to comment. We will be told in writing that the Ombudsman is in further correspondence with the complainant.

On the other hand, if the Ombudsman's provisional opinion suggests that the Department has made an error the provisional opinion will be sent to the Department for any comments.

After receiving any final comments from relevant parties (Department or complainant) the Ombudsman will then prepare his final opinion on the matter and convey that to both parties.

H.3 Departmental Contribution to Process

H.3.1 Full and Expeditious Cooperation

This Policy requires those Departmental staff involved with any Ombudsman's review to give full cooperation to the Ombudsman and to do so in the quickest practicable time.

H.3.2 Register the Review Notification

The review by the Ombudsman must be registered on SilentOne by GEMS. This will normally occur when the letter notifying the review comes to the Chief Executive.

H.3.3 Managerial Involvement

A Deputy Secretary, must take oversight of and responsibility for the interactions with the Ombudsman. Those interactions may include having discussions with the Ombudsman about the substantive issues involved. Discussions with the Ombudsman on such matters can also occur with a departmental Solicitor.

In any case where informal or formal discussions occur with the Ombudsman or his staff on substantive issues the departmental person involved shall keep a written record of key points and outcomes.

Any formal correspondence with the Ombudsman must be signed out by a Deputy Secretary on behalf of the Secretary of Labour. All letters sent to the Ombudsman's office must also be copied to the Chief Executive. Each such letter should have "CC. Secretary of Labour" written on them, so that it is clear it has been so copied. We expect correspondence from the Ombudsman to be addressed to the Chief Executive as Secretary of Labour.

The Deputy Secretary should consider whether the Minister's office needs to be made aware of the review.

The Deputy Secretary should consider early involvement of Legal Services because legal advice will be required before a response goes to the Ombudsman.

H.3.4 Management of Informal Contact

Any informal contact with the Office of the Ombudsman other than that authorised under H.3.3, should only be for administrative purposes, should be by staff who have managerial authority for that purpose, and should not deal with the substantive issues involved in the review. Any such informal contact should be recorded – time and nature of contact – and minuted to the Deputy Secretary overseeing the process.

H.3.5 Providing the Information

The Ombudsman has an **absolute right to see all the information** that is covered by the request. Because this should have been assembled in order to answer the request (unless the release was refused because of “substantial collation or research”) it should be readily available.

The Deputy Secretary overseeing the review should assure him/herself that the information was indeed assembled, and if it is discovered that it wasn't then immediate action needs to occur to internally review the adequacy of the original response. The Ombudsman should also be informed of any such development and of the process then put in place.

A copy should be made of the information covered (including copies of the letters sent by and to the requester) and the Ombudsman given the originals. A copy of the letter to the Ombudsman accompanying the material should be kept on file.

No relevant information should be withheld from the Ombudsman.

H.3.6 Providing the Reasoning

Two things must also happen:

- The Ombudsman should be given access to any internal documents that record or discuss how the Department made its decision on the request in the first place. This includes any emails or memos or notes of any meetings or conversations, including any legal advice.
- The Department should reconsider the basis for its original decision and either ensure it is robust and correct or determine whether to adjust or reverse its earlier decision. Obtaining legal advice should be part of this process.

The Ombudsman must then be provided with the original documentation leading to the decision and any defence of, or change to, that as a result of our reconsideration of the decision. You should also identify a contact person for the Ombudsman's representative to get in touch with. The letter providing all this information should be signed out by a Deputy Secretary, and copied to the Secretary of Labour.

H.3.7 Responding to a Preliminary Opinion

If the Department receives a preliminary opinion from the Ombudsman that seeks to have us change our decision, or an aspect of it, we will have a nominated number of working days to respond.

Preparation of the response should include early involvement of Legal Services.

Responding to the preliminary opinion is not usually an opportunity to provide new arguments or evidence. Rather it is an opportunity to ensure the Ombudsman has received all information the Department considers relevant and has understood our arguments or to ensure the Ombudsman can see why we emphasise certain matters over others.

If the preliminary opinion is persuasive then usually we should move to act in accordance with it rather than wait for the final opinion.

Again, the considered response should be signed out by a Deputy Secretary.

H.3.8 Failure to meet Ombudsman's Timeframes

Failure to meet the time limits for responding to the Ombudsman during any such review can result in the failure being formally reported to Parliament.

H.4 Ombudsman's Final Opinion

The Ombudsman may form a final opinion, but consider that making a recommendation is unnecessary or unwarranted.

If, however, the Ombudsman makes a recommendation that the Department releases information, that recommendation will become binding on the Department 21 days after it is made, unless —

- Cabinet “vetoes” the recommendation; or
- The Department, or another party, brings judicial review proceedings against the recommendation.

The relevant Deputy Secretary is accountable for actioning the Department's response as a matter of priority. Written records should be kept of all decisions and actions then taken.

H.5 Review of Ministerial Decisions

Most of the above process will be relevant to a review of a decision on a request made, or transferred to, a Minister. Our role will be to support the Minister's handling of the complaint to the extent required. This may involve administrative support and advisory support (including legal advice) as necessary.

In this situation, of course, all decisions are made by the Minister and all correspondence is with the Minister's office.

H.6 Lessons

Clearly, the process of managing a dispute about how a request was answered can be both resource intensive and time consuming.

From the successful complainant's point of view, the whole process can look either like incompetence or deliberate withholding of information. For these reasons three things are imperative:

- That the appropriate resources go into the handling of the original request to ensure the right decision is made.
- That authorised decision makers are involved at the required times throughout the process.
- That if we are found to have made a mistake, we fix it as early as possible and we ensure that we all learn from it.

Accordingly, where the Ombudsman makes a recommendation to the effect that the Department had wrongly withheld information or otherwise not complied with the Act, the Deputy Secretary, Legal will consider whether:

- Any changes to this Policy are required; and/or
- Discussion with the relevant Deputy Secretary is required; and/or
- To otherwise draw the issue to the attention of the Chief Executive.

I. Miscellaneous Issues

PRACTICALITIES OF RESPONSES

I.1 Official Information paper

All documents being released by the Department or by the Minister should be photocopied onto paper containing the words "Released under the Official Information Act". This is so that the manner of their release is clear to not only the requester but also to subsequent parties who may then be given copies of the material.

Supplies of the paper can be obtained from:

- Procopy in Wellington
- [To Come for outside Wellington]

I.2 Deletion of Information

If there is good reason to withhold information then there is good reason for making sure it is properly deleted from the copy released.

Text blacked out can sometimes still be visible after photocopying. Accordingly the proper way to delete information is either tape over it or cut it out before photocopying or to create a new version of the document with deletions.

The copy of the document released should usually show on its face where any deletions have been made so the requester can understand what they receive. A standard way of doing this is to put square brackets around the space from which deletions were made.

In some circumstances, the number of deletions will leave the document difficult to read. Also, if many deletions are being made, it is more likely that you will inadvertently release information (for example a person's name you wish to withhold). In these circumstances you might want to consider releasing a summary of the document, containing all the information that is being released, rather than making deletions.

I.3 Information not Covered

Sometimes a document that is being released pursuant to a request contains other information that is not covered by the request.

You are releasing the portion of the document that contains the relevant information but you are not withholding the other information – you are simply treating it as not relevant to the request.

If it will be obvious that information has been removed from a document in such circumstances, you should advise the requester of the reason – "Information that is not within the scope of the request has been deleted".

1.4 Record Keeping

Because any decision to withhold official information can be reviewed by the Ombudsman it is important to keep clear and accurate records of what has been released, what has been withheld, and which reasons for withholding apply to which pieces of information.

It is also important to ensure consistency of responses to similar requests for the same information, whether in response to another OIA request, or, for example, in response to a Parliamentary Question.

1.4.1 All information

We need to keep a record of all information that was considered to be covered by the request. This means we must keep copies of the three elements discussed in more detail below:

- Released Information
- Withheld Information
- Reasons for withholding.

1.4.2 Released information

This should be a photocopy of the actual information released so should show the “Released under the Official Information Act” mark on the released copies.

1.4.3 Withheld information

This should be recorded in the form of a copy of the full original document either indicating that it was completely withheld or with the bits that were not released highlighted in some way. This is best done with highlighter or by outlining the passage or sentence in ink.

1.4.4 Rationale for withholding

This has to be recorded in the accompanying letter that tells the requester what he or she is or is not getting [[Link – Template 7](#)]. But in that letter there will usually just be a general reference to one or more reasons for withholding all the information that was withheld, rather than an explicit reference to each piece of withheld information.

It is important, for any later discussion with the Ombudsman that may occur, to be able to accurately report not just which withholding reason was applied but also how it was applied to each piece of withheld information.

This means that each piece of withheld information should have written alongside it in our records the relevant section reference that we relied on in withholding it. This can be written in the margin of the copy which has the highlighted withheld bits. It is not appropriate to use yellow “stickies” to do this because they can easily be displaced.

1.4.5 Managerial and Legal input

The record kept should include evidence of relevant decisions by the 3rd Tier Manager and of any legal advice received. [[Link – I7](#)]

1.5 Proactive release

One practical way of managing the flow of official information requests can be to pre-empt them, or manage further interest in an issue, by proactively making the information widely available.

Managers should therefore regularly consider whether issues they have been dealing with, particularly in the context of policy development, can usefully be put in the public arena of our own initiative.

This is usually done by posting the material on the DoL website, or on the Minister's website.

Ministerial agreement may be necessary for such releases.

1.6 Contents of Letter

The letter responding to the request must:

- Be signed by an authorised decision maker [\[Link 17\]](#)
- Quote the section or sections of the Act which are being relied on to refuse any aspect of a request
- Identify what each section relates to [\[Link – List\]](#)
- Be accompanied by the information being released
- Advise the requester of the right to complain to the Ombudsman, for example, if any information is being withheld.

A template letter can be found at [\[Template 7\]](#).

1.7 Sign-off

All responses to official information requests, whether to release or withhold, must be approved and signed by the appropriate manager or other person who has been authorised by the Chief Executive.

1.8 Legal Advice

If it is proposed to withhold any information then this Policy requires that proposal to be subjected to legal scrutiny from the Department's Legal Services Team.

1.9 Charging

Make sure that where a charge is to be levied [\[Link\]](#) for the release of the information that an invoice [\[Link C14\]](#) for the amount of the charge is included with the documentation. [NOTE – in some cases where the charge is significant the release may be delayed until the charge is paid].

[Also, our Finance policies require that the invoice be generated from the Dolfin system, so that a copy of the invoice can be sent to the Finance Centre of Excellence so that they are aware of the debt and can follow up if there is non-payment.]

1.10 Acts that Require Release of Information

Every once in a while the Department receives a written demand (not request) for information from another Department. These demands are made pursuant to certain statutory provisions that empower those Departments to access the information in question.

Examples are the Inland Revenue Department (section 16 of the Tax Administration Act) and the Ministry of Social Development (section 11 of the Social Security Act).

In such situations the OI Act is overridden and there are no reasons for refusing the demand for the information. Nevertheless, you should always consult Legal Services when you receive such a letter to ensure that the demand is properly and lawfully made, and release should be signed out by a 3rd Tier Manager.

1.11 Dissatisfied Clients

If a requester responds to our decision by coming back to us and wishing to discuss the decision (instead of immediately complaining to the Ombudsman) you should listen to what they have to say.

Then consider whether what they have said means that you should reconsider the original decision or at least raise it with your manager.

Template 1
Letter to Person Not Entitled to Make Request

Dear...

I am responding to your request for information which was received by the Department on [.....]

The request related to *[state nature of information requested]*.

Unfortunately you are not a person who is entitled to make a request for information under the Official Information Act 1982. This is because you are not, as we understand it, a NZ citizen, a NZ permanent resident, a person who is actually in NZ, or a body corporate operating or registered in NZ.

Accordingly, your request is refused because it is not made in accordance with section 12 of the Official Information Act 1982.

You may contest this decision by complaining to the Ombudsman, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsmen
P O Box 10-152
WELLINGTON

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, you are encouraged to contact *[Name]*, *[Position]* on *[DDI]*.

Yours sincerely

...
for SECRETARY OF LABOUR

Template 2

Letter where both OI Act and Privacy Act Involved

Dear

I am responding to your request for information which was received by the Department on [.....].

The request related to *[state nature of information requested]*.

Your request falls to be dealt with under both the Privacy Act and the Official Information Act.

In relation to that information which is covered by the Privacy Act (ie, the information which is about you), *[here state the outcome of the decision under the Privacy Act – release or withhold, or both, and relevant sections if withholding involved]*.

In relation to that information which is covered by the Official Information Act (ie, the information which is not directly about you), *[here state the outcome of the decision under the OI Act – release withhold, or both and relevant sections if withholding involved]*.

[If information withheld under the Privacy Act]

You have the right to contest the decision to withhold information about you under the Privacy Act by seeking an investigation and review of that decision by the Privacy Commissioner who may be contacted at:

Privacy Commissioner
P O Box 10-094
WELLINGTON

[If information withheld under the OI Act]

You have the right to contest the decision to withhold information under the OI Act by seeking an investigation and review of that decision by the Ombudsman, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsmen
P O Box 10-152
WELLINGTON

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, you are encouraged to contact [\[Name\]](#), [\[Position\]](#) on [\[DDI\]](#).

Yours sincerely

...
for SECRETARY OF LABOUR

Template 3

Letter to Requester Transferring Request

[NOTE: Only possible within 10 working days of receipt of request]

Dear

I refer to your official information request dated ...

This letter is to notify you that the Department is transferring your request to *[insert details of Minister or Department or other organisation]*.

This transfer is occurring because the information to which your request relates:

[Delete one of the following]

[Either]

- Is not held by this Department but is believed by us to be held by *[insert as above]*

[Or]

- Is believed by the Department to be more closely connected with the functions of *[insert as above]*.

Further correspondence on this request will therefore come to you from *[insert as above]*. Note that the time limit for responding will be 20 working days from when *[insert as above]* receives this transfer from us.

Yours sincerely

...
for SECRETARY OF LABOUR

Template 4

Letter to Transferee

Dear

TRANSFER OF OFFICIAL INFORMATION ACT REQUEST

I attach the following:

- A request for official information from [xx] dated ...
- Our letter to [xx] dated ... notifying [xx] that the request is being transferred to you for response.

This letter serves as a formal transfer of this request under section 14 of the Official Information Act.

Please handle the request accordingly.

Yours sincerely

...
for **SECRETARY OF LABOUR**

Template 5

Letter Extending Time

Dear

I refer to your official information request dated ...

This letter is to notify you that the Department is extending the time available to it to answer your request. The Department's response will now be made *[specify date, or number of working days, or event that will determine when 20 working days will recommence]*.

The reason for the extension is that:

[Delete all but one of the following]

[Either]

- Your request is for a large quantity of information and meeting the 20 working day time limit would unreasonably interfere with the operations of the Department.

[Or]

- Your request necessitates a search through a large quantity of information and meeting the normal 20 working day time limit would unreasonably interfere with the operations of the Department.

[Or]

- Consultations necessary to make a decision on your request are such that a proper response to your request cannot be reasonably made within the normal 20 working day time limit.

You have the right to seek an investigation and review of our decision to extend the time by the Ombudsman, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsmen
P O Box 10-152
WELLINGTON

If you wish to discuss any aspect of your request or this letter, or if you require any further assistance, you are encouraged to contact [\[Name\]](#), [\[Position\]](#), on [\[DDI\]](#).

Yours sincerely

...
for SECRETARY OF LABOUR

Template 6

Acknowledgement Letter

[For use at end of 3 day initial processing period]

Dear

This letter is to acknowledge receipt of your official information request dated [.....] relating to *[nature of information requested]*.

Your request is the responsibility of *[name]*, *[title]*, who can be contacted on *[DDI]* or *[email]* if you have any queries in relation to it.

[I also record the telephone discussion we have already had regarding [scope] content of the request and/or the charge for answering request. The position reached was that]

Please direct any enquiries to the abovenamed, but you can expect to receive a response by *[date]*.

Yours sincerely

.....
for **SECRETARY OF LABOUR**

Template 7

Letter Withholding Information

[This applies whether all or just some of the information is being withheld]

Dear

I refer to your official information request dated ...

[I attach copies of the following information which is covered by your request].

Certain *[or All]* information is being withheld in reliance on section *[insert relevant references to withholding provisions including a brief description of what the provisions relate to. For some standard descriptions of that nature refer to]*.

[Insert as necessary any further explanation of the grounds for refusal]

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, you are encouraged to contact *[Name]*, *[Position]*, on *[DDI]*.

You have the right to contest the decision to withhold information by seeking an investigation and review of that decision by the Ombudsman, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsmen
P O Box 10-152
WELLINGTON

Yours sincerely

...
for **SECRETARY OF LABOUR**

Template 8

Letter Releasing Information

[This only applies if all of the information is being released]

Dear

I refer to your official information request dated ...

I now enclose all the information which is covered by your request.

If you wish to discuss any aspect of your request or this response, or if you require any further assistance, please contact *[Name]*, *[Position]*, on *[DDI]*.

Yours sincerely

.....
for **SECRETARY OF LABOUR**

NOTE: *additional paragraphs may be added if you want, for example, to explain:*

- *That the context in which the information was prepared may have changed.*
- *That some of the released information may have subsequently been found to be inaccurate.*
- *That we have enclosed additional information that was not covered by the request, but which we think the requester would be interested in.*

Template 9

Contents of Letter Relating to Charging

[This applies whenever it is intended to charge for the release of information]

Dear

I refer to your official information request dated [.....] relating to *[nature of information requested]*.

This letter is to notify you that because of the scope of information covered by your request, it will be necessary to impose a charge for making the requested information available.

It is estimated that the amount of the charge will be \$[.....]. This amount has been calculated as follows:

[Set out method of calculation]

[To be used if the amount to be charged is \$76.00 or less]

We will therefore not continue to process your request until you have paid/agreed to pay the amount above in full.

[To be used only if the total charge is in excess of \$76.00]

We will therefore not continue to process your request until you have

[Insert either]

“paid the amount quoted above in full”

[Or]

“agreed to pay the amount in full prior to the information being provided to you”

[Or]

“agreed to pay the amount in full as soon as the information has been provided to you”

[Or]

“made a part payment of \$[.....] to be followed by payment of the remainder of the charge prior to the information being provided to you”

[Or]

“made a part payment of \$[.....] to be followed by payment of the remainder of the charge as soon as the information has been provided to you”.

If you wish to discuss any aspect of your request or this letter, or if you require any further assistance, you are encouraged to contact [\[Name\]](#), [\[Position\]](#), on [\[DDI\]](#).

You have the right to contest the decision to charge for information by seeking an investigation and review of that decision by the Ombudsman, whose address for contact purposes is:

The Ombudsman
Office of the Ombudsmen
P O Box 10-152
WELLINGTON

Yours sincerely

.....
for SECRETARY OF LABOUR

Template 10

Letter Providing Reasons for Decision (s.23)

Dear

You have requested, under s.23 of the Official Information Act 1982, reasons for the following decision or recommendation made by the Department about you:

- *[Describe the general nature of the decision or recommendation referred to in the request].*

Below are set out the various elements of these reasons, as required by s.23(i):

- a) the findings on material issues of fact
[list factual findings that were relevant to your decision, ie, the facts that you took into account]
- b) The information on which those findings were based
[List the places or sources from where you got the facts listed in (a)].
- c) The reasons for the decision or recommendation
[here set out how, when you applied the relevant law or policy or criteria to the factual findings, you reached the decision or recommendation you did].

I trust this answers your enquiry satisfactorily. If you have any further questions please contact *[Name]*, *[Position]*, on *[DDI]*.

Yours sincerely

.....
for **SECRETARY OF LABOUR**

Authorisation & Direction

In terms of sections 15(4) and 15A(1) of the Official Information Act 1982, I hereby authorise all persons holding 2nd and 3rd tier management positions within the Department of Labour to make decisions on requests for official information and for extensions of time limits made under that Act.

This Authorisation revokes all previous authorisations under those sections and overrides anything in the Policy for Handling Official Information Requests that is inconsistent with it.

I also direct that any decision under section 14 of that Act should be made only by persons holding those 2nd and 3rd tier management positions.

Christopher Blake
SECRETARY OF LABOUR

20 May 2009

List of Standard Descriptions for Withholding Sections

The following descriptions are for use in Template 7, Letter Withholding Information, in order to better and consistently inform requesters about the nature of the withholding section being relied on:

Note: Those section numbers not in bold are those that are seldom relevant to requests processed by this Department.

- “Section 6(a) – which relates to prejudice to the security or defence of New Zealand or the international relations of the New Zealand Government”.
- “Section 6(b) – which relates to prejudice to the confidential entrusting of information to the New Zealand Government by other governments or by international organisations”.
- “**Section 6(c)** – which relates to prejudice to the maintenance of the law”.
- “**Section 6(d)** – which relates to the safety of a person being endangered”.
- “Section 6(e) – which relates to serious damage to New Zealand’s economy by premature disclosure of policy decisions”.
- “**Section 9(2)(a)** – which relates to the privacy of natural persons”.
- “Section 9(2)(b)(i) – which relates to trade secrets”.
- “Section 9(2)(b)(ii) – which relates to unreasonable prejudice to the commercial position of a person”.
- “**Section 9(2)(ba)(i)** – which relates to confidential information and prejudice to its future availability”.
- “Section 9(2)(ba)(ii) – which relates to confidential information and damage to the public interest”.
- “Section 9(2)(c) – which relates to the protection of the health and safety of members of the public”.
- “Section 9(2)(d) – which relates to the substantial economic interests of New Zealand”.
- “Section 9(2)(e) – which relates to measures preventing or mitigating loss to the public”.
- “Section 9(2)(f)(i) – which relates to the constitutional conventions protecting the confidentiality of communications with the Sovereign”.
- “Section 9(2)(f)(ii) – which relates to the constitutional conventions protecting collective and individual ministerial responsibility”.
- “Section 9(2)(f)(iii) – which relates to the constitutional conventions which protect the political neutrality of officials”.

- “**Section 9(2)(f)(iv)** – which relates to the constitutional conventions which protect the confidentiality of advice tendered by Ministers or officials”.
- “**Section 9(2)(g)(i)** – which relates to the effective conduct of public affairs through the free and frank expression of opinion by or to Ministers or officials”.
- “Section 9(2)(g)(ii) – which relates to the effective conduct of public affairs through the protection of Ministers and officials from improper pressure or harassment”.
- “**Section 9(2)(h)** – which relates to the maintenance of legal professional privilege”.
- “Section 9(2)(i) – which relates to enabling commercial activities to be carried out without prejudice or disadvantage”.
- “**Section 9(2)(j)** – which relates to negotiations being carried out without prejudice or disadvantage”.
- “Section 9(2)(k) – which relates to preventing the disclosure or use of official information for improper gain or advantage”.
- “Section 18(b) – because I can neither confirm nor deny the existence or non-existence of the information requested”.
- “Section 18(c)(i) – because releasing the information requested would be contrary to the provision of the [\[insert name of Act\]](#)”.
- “Section 18(c)(ii) – because releasing the information requested would constitute contempt of court/the House of Representatives [\[delete one\]](#)”.
- “Section 18(d) – because the information requested is, or will soon be, publicly available”.
- “Section 18(e) – because the document that contains the information requested does not exist/can’t be found [\[delete one\]](#)”
- “Section 18(f) – because the information requested cannot be made available without substantial collation or research”.
- “Section 18(g) – because the information requested is not held, and I do not believe the information is held by, or is more closely connected with the functions of, any other Department or Minister”.
- “Section 18(h) – because the request is frivolous or vexatious”.
- Section 18(i) – because the information requested is trivial”.