

Proactive Release Policy

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Approved by:	Organisational Health Committee; 1 December 2022
Owner:	Ministerial and Executive Services

Purpose

The Proactive Release Policy (the Policy) sets out the principles and high-level considerations that the Ministry of Social Development's (the Ministry) staff should consider when proactively releasing official information.

Application of this Policy

This policy applies to everyone at the Ministry, including seconded, contracted and temporary staff, and external contractors (referred to as "staff").

The policy is designed to support staff in the voluntary release of official information,¹ where that information is of public interest or supports the Ministry's objectives to promote accessibility and transparency.

This policy does not apply where there has been a request for official information. If staff have received a request for a specific information, staff should refer to the Ministry's policies and guidelines relating to the Ministry's obligations under the Official Information Act 1982 (OIA).

When applying this policy, staff should also consider:

- Operational guidance which has been designed to support the implementation of this policy
- The Ministry's obligations to our Ministers as a Public Service Department, especially in relation to information releases on a "no surprises" basis
- The Ministry's legal obligations to our clients, staff, iwi, partners, and service providers (for example privacy, employment, intellectual property and other contractual obligations).

¹ For the purposes of this policy, Official Information means any information held by the Ministry or its staff, for example:

- Documents, reports, memoranda, letters, texts, emails, and drafts.
- Non-written information, such as video or tape recordings.
- Manuals which set out internal rules, principles, policies, or guidelines for decision making.
- Information known to an agency but has not yet been written down.

Principles

The Ministry of Social Development is committed to supporting an open and transparent government by making more high-value official information available to the public. Through this policy we seek to promote good government, openness, and transparency, with the aim of encouraging public trust and confidence in the Ministry's policies, processes, services, and staff.

When proactively releasing information, the Ministry must take particular care to be aware of legal risks such as defamation, breach of contract, disclosing commercially sensitive information, copyright, or privacy, before deciding to proactively release information. The provisions of the OIA (section 48) which protects the Ministry from legal action brought in respect of information releases made in good faith do not apply to proactive releases of information.

Given these considerations the following principles will guide the implementation of this policy and the development of supporting operational guidance.

When proactively releasing information, staff will:

- Treat the proactive release of information similar to a request for information under the OIA, specifically with reference to the grounds for withholding information (sections 6 and 9 of the OIA).
- Exercise due diligence before proactively making information available and assess risks of proactively releasing information, including considerations relevant to the preservation of personal privacy and commercial information.
- Engage in appropriate consultation, with affected or interested parties including iwi, prior to deciding on whether to release the information. Where the information proposed for release relates to another agency, entity or organisation, staff will advise that party of the planned release, to enable them to undertake their own preparative processes.
- Implement a "no surprises" basis, which means that the relevant Ministerial Office should be informed in advance of proactive releases.
- Release information within an appropriate timeframe, taking into consideration any factors that may impact the public benefits and risks associated with the release.

What information will the Ministry proactively release?

All information created or co-created by the Ministry in the course of our work can be considered official information, however that does not mean that all information is suitable for proactive release.

When deciding what information is suitable for proactive release, staff will consider:

- Whether the information would promote or support the transparency of Government or is of constitutional importance.
- Whether, if requested under the OIA, the information would be withheld under section 9(2)(f)(iv) (to protect the confidentiality of advice tendered by Ministers of the Crown and officials).
- Whether the information is subject to a Cabinet direction to release the information within a particular timeframe (refer to CO (18) 4: Proactive Release of Cabinet Material).
- Whether the information relates to key functions of the Ministry or of other agencies or would provide guidance to the public about the Ministry's functions.
- Whether the information would likely be of general interest or use to the public.
- The quantity/quality of the information and degree of difficulty/cost associated with releasing it.
- Whether the information contains information that could identify an individual/s or create privacy or commercial impacts through the release of the information.
- Whether there are any legal or reputational risks to the Ministry from releasing the information.

When weighing up these considerations, staff should consult with the relevant teams who have an interest in the information within the Ministry.

Required sign out for proactive release of information

When proactively releasing information, staff should seek the approval of the same manager that would approve the release of the information if the information was subject to a request made under the OIA.

Where the information is not suitable for release or only suitable in part

In the absence of a request for information under the OIA, the Ministry does not have a legal requirement to release the information. Therefore, the Ministry can choose to withhold the information in part or in full.

Where information is being withheld, redactions should be made with reference to the sections of the OIA, as if the proactive release was a request for

information under the OIA.

Further, if redactions have been made to documents which have been proactively released and it is determined later more information can be made available, staff are able to revise and update the information.

Proactive release of OIA responses

At least every quarter the Ministry will publish responses to OIA requests that are appropriate for wider publication. When deciding whether to proactively publish a response to a request, relevant considerations may include:

- Whether there has been more than one request for the information, or on the topic the information covers.
- Whether the information would be of general interest to the public.
- Whether release of the information to an audience wider than the requester would create any risk to the Ministry.

We will advise requesters of official information that our response to them, and the information we provide, may be published on our website. Before publication, we will remove personal details or context that would reveal the identity of the requester.

Publication and access to proactively released information

Once a decision is made to publish proactively released information, staff must take steps to advise relevant Ministerial Offices and the Office of the Chief Executive of the information to be released and proposed redactions (if any). This is to ensure the Ministry's commitment to "no surprises".

The Communications team should also be advised prior to the publication of the proactive release.

Information should be released in a way intended to make it easy for the public to find and access it – for example, in a web location associated with the topic of the information, as a media release, or as a dataset. Wherever possible, information will be released in a format that meets publishing web-standards, e.g., machine-readable, non-proprietary, complete, and clear.

Accessible formats

Staff should consider translation into accessible formats (such as easy read or NZSL) if translating the documents supports the principles of this policy.

This decision should be made in consultation with MSD's Accessibility team.

Implementation

Ministerial and Executive Services (MaES) will own the policy and develop operational guidance and training to support the implementation of this policy.

Monitoring and Reporting

It is important we have data to know if the steps we are taking to improve release practices are working, and that this data is itself transparent to the public.

Every six months, MaES will provide information on the number of Cabinet papers proactively released, and the OIA requests proactively published. This information will be available on the Public Service Commission's website.

MaES will undertake an annual assurance survey, the results of which will be shared internally.

Relevant resources

The following policies, procedures, standards, guidelines, legislation, and/or websites are relevant to this policy:

- MSD's [Information Management Policy](#)
- MSD's [Risk Management Policy](#) and [Risk Management Process](#)
- MSD's [Privacy Policy and Guidelines](#)
- MSD's [Accessibility Toolkit](#) and MSD co-designed the [Accessibility Charter](#)
- [The Official Information Act 1982](#)
- [The Privacy Act 2020](#)
- [The Public Records Act 2005](#)
- [The Cabinet Manual, Section 8, Cabinet Office circular CO \(18\) 4: Proactive Release of Cabinet Material: Updated Requirements](#)
- Te Kawa Mataaho Public Service Commission's [Proactive Release of Official Information](#) [Public Service Commission](#) and [Publishing completed OIA requests](#)
- Ombudsman New Zealand's [Proactive release: Good practices for proactive release of official information](#)
- [Open and Transparent Government, Information Management](#) , and [Information Management Principles](#) on the ICT.Govt.nz website
- NZ Government [Web Accessibility Standards](#) and [Web Usability Standard](#)
- Conformance for all internal and external webpages at MSD through Accessibility Standard mandates [Web Content Accessibility Guidelines \(WCAG\) 2.1](#)