

Public interest

A guide to the public interest test in section 9(1) of the OIA and section 7(1) of the LGOIMA

The grounds for withholding official information in [section 9](#) of the OIA and [section 7](#) of the LGOIMA are subject to a ‘public interest test’.

This means agencies must balance the public interest in disclosing information against the need to withhold it. If the public interest in disclosure outweighs the need to withhold the information, then it must be released.

This is a guide to how the public interest test works in practice. It contains discussion and case studies to illustrate:

- *the kinds of public interest considerations that can favour disclosure of official information;*
- *some factors that can affect the weight of the public interest in disclosure; and*
- *alternative ways that agencies can seek to strike the right balance between the need to withhold information and the public interest in release.*

Contents

What the Acts say	4
What is the ‘public interest’?	4
How the public interest test works	5
The balancing exercise—diagrams	6
Reasons for withholding are exhaustive	7
How to identify the public interest considerations favouring disclosure	8
The purpose of the request	8
The content and context of the information	8
Example public interest considerations favouring disclosure	9
The starting point—section 4(a)	10
Transparency	11
Participation	11
Accountability	12
Administration of justice	15
Health, safety and the environment	17
Irrelevant considerations	17
Factors that can affect the weight of the public interest	18
The significance of the subject	18
The people affected	18
The level of interest or debate	18
The level of disquiet, speculation or controversy	19
The extent of information in the public domain	19
The need to provide the ‘full picture’, or to correct inaccurate, incomplete or misleading information	19
The amount of public money involved	19
The nature and seriousness of the ‘wrongdoing’ or what went wrong	20
The seniority of the individuals involved	20
The age, currency and relevance of the information at issue	20
The timing of the request	21
The purpose of the request	22
Other means of obtaining the information	22
Other means of scrutiny or regulation	22
Other ways of getting the balance right	23
Deletions	24
Key documents	24
Excerpts or summaries	24
Manner of release	24

Conditions	25
Release of other information	25
Release later—when the timing of the request is an issue	26
Proactive release	27
Recording and giving reasons	27
Further guidance	28
Appendix 1. Public interest step-by-step work sheet	29
Appendix 2. Case studies	31
Index	31

What the Acts say

The OIA and LGOIMA are based on the **principle of availability**, which means official information must be made available on request unless there is ‘good reason’ to withhold it.¹ The Acts list the ‘good reasons’ for withholding official information.² Some reasons are ‘conclusive’—if they apply, the information can be withheld.³ Other reasons are subject to a ‘public interest test’—if they apply, the decision maker must go on to consider whether the need to withhold is outweighed by the public interest in disclosure.⁴ If the public interest in disclosure is stronger, the information must be released. If it is not, then there is ‘good reason’ to withhold. This is what we call the ‘public interest test’.

What is the ‘public interest’?

The public interest is broadly equivalent to the concept of the public good. It can cover a wide range of values and principles relating to the public good, or what is in the best interests of society. Some [example public interest considerations](#) are outlined below.

Public interest does not mean ‘interesting to the public’. It means the issue is one of legitimate public concern. As the High Court has said:⁵

Once again it is necessary to draw attention to the distinction between matters properly within the public interest, in the sense of being of legitimate concern to the public, and those which are merely interesting to the public on a human level—between what is interesting to the public and what it is in the public interest to be made known.

The fact that an issue is discussed in the news media may indicate that there is a public interest at stake, but it does not prove it (see [The level of interest or debate](#), under [Factors that can affect the weight of the public interest](#)).

Public interest does not mean the entire population has to be affected, or even a significant section of it (although the fact that a large number of people are affected may increase the public interest in disclosure—see [The people affected](#), under [Factors that can affect the weight of the public interest](#) below). The **private interests** of individuals can also reflect wider public interests. Just because a requester will gain personally from receiving the information does not

¹ See s 5 OIA and LGOIMA.

² See ss 6 and 9 OIA and ss 6 and 7 LGOIMA. Note, there are also some ‘administrative’ reasons for refusing requests, found in s 18 OIA and s 17 LGOIMA.

³ See s 6 OIA and LGOIMA.

⁴ See s 9 OIA and s 7 LGOIMA.

⁵ *TV3 Network Services Ltd v Broadcasting Standards Authority* [1995] 2 NZLR 720 at 733.

necessarily mean there is not also a wider public interest to be served by release. As the authors of *Freedom of Information in New Zealand* note:⁶

Damage to individual interests is damage to society as a whole. The need of a particular applicant for a particular item of information to rehabilitate his or her reputation or to pursue an occupation should not be dismissed because it pertains only to one person. Just as the OIA recognizes personal interests in secrecy through the medium of specific exemptions such as sections 6(d) and 9(2)(a), (b) and (ba) so it is capable of recognizing personal interests in disclosure through the less precise medium of the public interest.

For examples of cases where the private interests of the requesters gave rise to a public interest in release, see cases [172023](#) and [167380](#).

How the public interest test works

The starting point is the ‘*principle of availability*’ mentioned earlier. That is, official information must be made available on request unless there is ‘*good reason*’ for withholding it. The ‘*good reasons*’ for withholding that are subject to the public interest test are listed in [section 9](#) of the OIA ([section 7](#) of the LGOIMA).

Section 9(2) of the OIA (section 7(2) of the LGOIMA) provides an [exhaustive list](#) of the interests in favour of withholding official information under that section. They include things like personal privacy, confidentiality and commercial interests. For help in deciding whether one of these grounds applies, see our [official information legislation guides](#).

Section 9(1) of the OIA (section 7(1) of the LGOIMA) is where the public interest test is articulated. It says there will be good reason for withholding information where one of the grounds in section 9(2) applies, unless the need to withhold is **outweighed** by the public interest in disclosure.

In practice, this means that agencies **must**:

1. Identify the section 9(2) / section 7(2) interest(s) in favour of withholding the information.⁷
2. Identify the public interest considerations in favour of disclosing the information.
3. Assess the relative weight of these competing interests, and decide whether the public interest in disclosure outweighs the need to withhold.

⁶ Eagles, I, Taggart, M, and Liddell, G. *Freedom of Information in New Zealand*. Oxford: Oxford University Press, 1992 at 214-215.

⁷ Note, if none of the grounds in s 9(2) OIA / s 7(2) LGOIMA applies, the information must be made available.

The public interest test as explained in *Kelsey v the Minister of Trade*

The High Court in *Kelsey v the Minister of Trade* explained the public interest test in the following terms:⁸

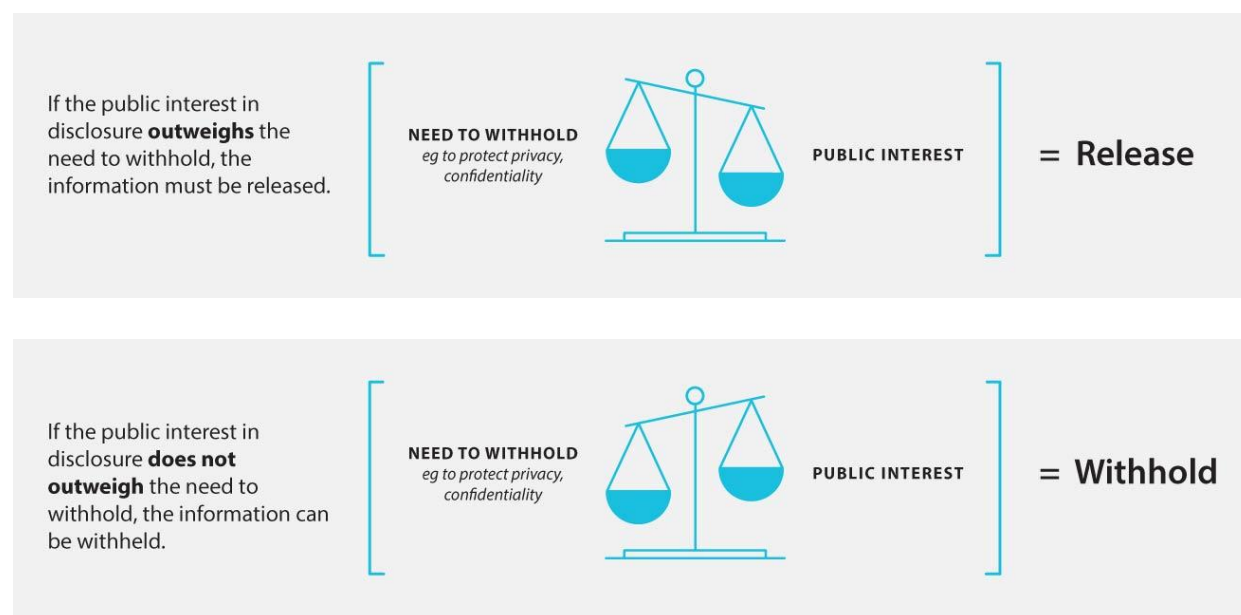
Before official information can be withheld under s 9 of the Act, the decision-maker must do more than conclude that the information requested falls within one of the categories listed in s 9(2) of the Act. Section 9(1) of the Act requires the decision-maker to undertake a balancing exercise and decide whether the public interest in withholding information is outweighed by other considerations that support disclosure of the information.

The Court agreed that the following statement is ‘consistent with the correct approach to the test in s 9(1) of the Act’:⁹

Only if the considerations favouring disclosure in the public interest outweigh the need to withhold must the information be made available pursuant to the principle of availability set out in section 5 of the [Act].

The balancing exercise—diagrams

These diagrams illustrate how the public interest balancing exercise works in practice.



⁸ *Kelsey v the Minister of Trade* [2015] NZHC 2497 at paragraph 27.

⁹ Above, at paragraph 140.

If the competing considerations are **evenly balanced**, the information can be withheld. This is because the public interest in disclosure must outweigh the need to withhold.



Getting the terminology right

Agencies should be careful to use the right terminology when talking about the decision to withhold official information.

Section 9(2)(a) etc ‘applies’

This means you’ve considered the grounds listed in section 9(2) of the OIA (or section 7(2) of the LGOIMA), and concluded that withholding is necessary to either protect, or avoid prejudice to, one of the stated interests.

Section 9(2)(a) etc ‘provides good reason for withholding the information’

This means you’re satisfied that one of the grounds listed in section 9(2) of the OIA (or section 7(2) of the LGOIMA) applies **and** you’ve concluded that the need to withhold the information is not outweighed by the public interest in release.

It’s not correct to talk about there being ‘good reason’ to withhold until you’ve done the public interest balancing exercise required by section 9(1) of the OIA (section 7(1) of the LGOIMA).

Reasons for withholding are exhaustive

The interests in favour of withholding information are listed **exhaustively** in section 9(2) of the OIA (section 7(2) of the LGOIMA). Factors not listed there have no part to play in the balancing exercise.

Freedom of Information in New Zealand states:¹⁰

Under section 9(1) the public interest operates in one direction only: in favour of openness. There is no general public interest in secrecy other than that which has been given specific expression in the stated statutory criteria for withholding. Policy factors favouring withholding which receive no mention in section 9(2) are not to be placed in the scales at all.

¹⁰ Note 6 above, at 215.

How to identify the public interest considerations favouring disclosure

To help identify the public interest considerations favouring disclosure agencies should consider:

1. the purpose of the request; and
2. the nature and content of the information.

The purpose of the request

Agencies should read the request carefully. Does the requester state their purpose? While there is no requirement to do so, they may have volunteered this information.

Agencies can always ask the requester about the purpose of their request. They can explain that the reason for asking is to help identify the public interest considerations favouring disclosure of the information. Agencies must be careful not to suggest that provision of this information is compulsory, or that the request will necessarily be refused if it is not supplied.

Here are some examples of how the requester's purpose can help in identifying the public interest in disclosure.

- The requester seeks the information to respond to allegations against them—there may be a public interest in disclosure to promote [procedural fairness](#).
- The requester seeks the information to pursue recovery of a debt—there may be a public interest in disclosure to promote [the administration of justice](#).
- The requester seeks the information to make informed submissions as part of a public consultation project—there may be a public interest in disclosure to promote public [participation](#) in decision making.

See also the discussion of [The purpose of the request](#), under [Factors that can affect the weight of the public interest](#).

The content and context of the information

Agencies should carefully read and review the information that has been requested. This is necessary in any event in order to determine whether the withholding grounds apply. Is the **content** of the information such that its release would in some way promote the public interest?

Agencies should also consider the **context** of the information:

- How did it come to be held or generated?
- How has it been / will it be used?

- What process does it form part of?
- What stage has been reached in that process?

Here are some examples of how the content and context of the information can help in identifying the public interest in disclosure.

- The information relates to [expenditure of public money](#), or allegations of [wrongdoing](#) within an agency—there may be a public interest in disclosure to promote accountability.
- The information relates to a decision making process in train—there may be a public interest in disclosure to promote public [participation](#) in that process.
- The information relates to a completed decision making process—there may be a public interest in disclosure to promote [accountability of the decision maker](#).

Example public interest considerations favouring disclosure

This section discusses the following **examples** of public interest considerations favouring disclosure of official information:

- [Transparency](#)
- [Participation](#)
- [Accountability](#)
- [Administration of justice](#)
- [Health, safety and the environment](#)

The examples are illustrated by [case studies](#) in appendix 2 of this guide.

Important notes

The example public interest considerations should be read with the following caveats in mind.

1. It is not possible to exhaustively list all potential public interest considerations favouring disclosure of official information. As Lord Hailsham remarked in *D v NSPCC*, ‘the categories of public interest are not closed’.¹¹ The ‘public interest’ is an open-ended and flexible concept. It depends entirely on ‘the circumstances of the case’.¹² The fact that a public interest consideration favouring release is not mentioned here does not mean it cannot arise in the context of a particular case, or that it will attract

¹¹ [1978] AC 171 at 230.

¹² See s 9(1) OIA and s 7(1) LGOIMA.

any less significance or weight than the ones that are mentioned.

2. The examples provided are necessarily framed in broad and general terms. How relevant and compelling they are will (again) depend on the circumstances of the case, including the actual content of the information at issue. There should be a **connection** between the actual content of the information at issue and the public interest that is said to be served by its release. Multiple public interest considerations may be relevant in a particular case.
3. As explained above (see [How the public interest test works](#)), the public interest in disclosure must be balanced against the need to withhold the information. It is not enough that one or more of these example public interest considerations is relevant. The public interest must be strong enough in the circumstances of the particular case to **outweigh** the identified need to withhold the information.

Later in this guide we discuss [Factors that can affect the weight of the public interest](#) and [Other ways of getting the balance right](#).

The starting point—section 4(a)

[Section 4](#) of the OIA and LGOIMA sets out the purposes of the Acts. Paragraph (a) of that section provides an important starting point for thinking about the public interest in release of the information.

Section 4(a) of the **OIA** says one its purposes is to increase progressively the availability of official information to the people of New Zealand in order—

- to enable their more effective **participation** in the making and administration of laws and policies; and
- to promote the **accountability** of Ministers of the Crown and officials—

and thereby to enhance respect for the law and promote the good government of New Zealand.

Section 4(a) of the **LGOIMA** says one of its purposes is to increase progressively the availability to the public of official information held by local authorities in order—

- to enable more effective **participation** by the public in the actions and decisions of local authorities; and
- to promote the **accountability** of local authority members and officials—

and thereby to enhance respect for the law and promote good local government in New Zealand.

The Acts therefore explicitly recognise the public interest in promoting:

- public participation in decision making; and
- the accountability of Ministers, agencies and their staff.

These are acknowledged as contributing toward respect for the law and good government, which are themselves in the public interest.

[Participation](#) and [accountability](#) considerations are discussed in more detail below.

Transparency

There is a general public interest in promoting the transparent conduct of public affairs.

Transparency is a *'characteristic of governments, companies, organisations and individuals that are open in the clear disclosure of information, rules, plans, processes and actions'*.¹³

Transparency can enhance levels of citizens' trust in government, and maintain integrity in the public sector. It encourages good administration and financial management and discourages corruption and other bad practices. It also fosters effective public sector [accountability](#). If government and its agencies can be seen to be held to account for their actions, they are more likely to operate in the public interest. Case [175789](#) illustrates the public interest in transparency around the identities of public sector contractors.

Participation

As noted above, [section 4\(a\)](#) of the official information legislation recognises that public participation in decision making—including the making and administration of laws and policies—enhances respect for the law and promotes good government. This is on the basis that informed public participation leads to better decisions that are more likely to be accepted.

There is a public interest in disclosure of information that enables people to understand and debate issues, and participate in decision making processes which affect them. These decision making processes may be in respect of the individual requester, a section of the public, or the public more generally.

Considerations of participation commonly arise in the context of decision making processes, public consultation and submission processes, public hearings and inquiries, parliamentary select committee processes, and general elections.

In this context, **timely** access to information can be very important. There is usually a deadline or endpoint after which the information becomes of limited use to the public's ability to participate in or influence the relevant process. This may prompt requesters to submit urgent

¹³ Transparency International. 'Corruption glossary'. Retrieved on 29 April 2016 from <https://www.transparency.org/glossary/>.

requests.¹⁴ In this situation, consideration could be given to whether it is fair and practicable to extend the deadline for participation, to enable the information to be released and used by the requester. This makes it less likely that the participation process could be criticised or challenged as having been conducted on a less than well-informed basis.

The following cases illustrate the public interest in promoting effective public participation: [173160](#), [318858](#), [172117](#), [360811](#), [339333](#) and [378663](#).

The Danks Committee on participation

The committee that recommended the enactment of the OIA said this about participation:¹⁵

For many people the arguments for greater access to official information start with participation, on the principle that a better informed public is better able to play the part required of it in the democratic system—and to judge policies and electoral platforms. It is expected too that the critical and at times difficult choices that governments have to make for our society will be better resolved if the community is well informed. In this way also political decisions would have a stronger claim to be made in the name of the community.

Accountability

As noted above, [section 4\(a\)](#) of the official information legislation also recognises that holding Ministers, agencies and their staff accountable for their actions enhances respect for the law and promotes good government. Accountability in this context means Ministers, agencies and people working in central or local government being responsible for how they:

- [make decisions and perform their functions](#);
- [spend public money](#); and
- take appropriate action [when things go wrong](#).

The Danks Committee on accountability

The committee that recommended the enactment of the OIA said this about accountability:¹⁶

Another argument often stressed is that access of citizens to official information is an essential factor in making sure that politicians and administrators are accountable for their actions. Secrecy is an impediment to accountability, when Parliament, press, and

¹⁴ For more information about responding to urgent requests see [The OIA for Ministers and agencies](#) and [The LGOIMA for local government agencies](#).

¹⁵ Committee on Official Information. *Towards Open Government: General Report*. (December 1980) at 14.

¹⁶ Above, at 14.

public cannot properly follow and scrutinise the actions of government or the advice given and options canvassed. Divisive suspicion of government and its advisors is encouraged when decisions are made without recognisably comprehensive public presentation of how they have been arrived at.

Accountability for making decisions and performing functions

There is a public interest in disclosure of information that illuminates government, ministerial and administrative decision making processes, including the advice and options considered, and the reasons for the decision.

There is also a public interest in disclosure of information that enables people to understand and evaluate how Ministers, agencies and people working in central or local government are performing their functions.

The following cases illustrate the public interest in promoting accountability for making decisions and performing functions: [340832 and 276668](#), [339333](#) and [378663](#).

Accountability for spending public money

There is a public interest in the disclosure of information that allows people to see how public money is being spent. As the High Court has recognised:¹⁷

It is fundamental to the [official information legislation] that the public are to be given worthwhile information about how the public's money and affairs are being used and conducted, subject only to the statutory restraints and exceptions.

Disclosure of such information:

- acts as an incentive to agencies and staff to use public money wisely; and
- promotes public trust and confidence in the proper and prudent expenditure of public money.

This is so regardless of whether or not there is any concern or suspicion of inappropriate use or expenditure. However, the existence of any such concern or suspicion may increase the public interest in disclosure—see [The level of disquiet, speculation or controversy](#) under [Factors that can affect the weight of the public interest](#).

The following cases illustrate the public interest in promoting accountability for spending public money: [C225 and C228](#), and [293402](#).

¹⁷ *Wyatt Co (New Zealand) Ltd v Queenstown-Lakes District Council* [1991] 2 NZLR 180 at 190.

'But we don't spend public money'

Some agencies subject to the official information legislation don't spend '*public money*' in the sense that they are funded by tax-payer or rate-payer revenues. For instance, some entities may be funded through commercial revenues and others through stakeholder levies or tariffs. That does not mean there is no public interest in disclosure of information about their expenditure.

In each case, it is necessary to consider why those entities were made subject to the official information legislation: what it is about their constitution, their powers, their functions, their relationship with the government and New Zealanders generally that, in Parliament's view, warranted the application of this important accountability measure?

Some entities—for example, state-owned enterprises—may be accountable to the public as '*owners*' rather than '*funders*'. As the Privy Council has recognised:¹⁸

A state-owned enterprise is a public body; its shares are held by ministers who are responsible to the House of Representatives and accountable to the electorate. [It] carries on its business in the interests of the public.

Other entities—for example, statutory producer boards and marketing authorities—may be accountable to a narrower, but no less important, segment of the public in the form of their stakeholders.

Accountability when things go wrong

There is a public interest in disclosure of information when things go wrong—whether inadvertently or by intention—to show what went wrong, and what steps have been put in place to prevent a recurrence.

Disclosure of such information:

- acts as an incentive to agencies and staff to engage in proper and lawful conduct and administration, and to adequately identify and manage risks; and
- helps to restore public trust and confidence that appropriate steps have been taken to remedy the wrong, and to try and prevent it happening again.

Example situations where this public interest consideration may arise include:

- misconduct;
- negligent, improper or unlawful conduct;
- conduct resulting in poor outcomes; and

¹⁸ *Mercury Energy Limited v Electricity Corporation of New Zealand* [1994] 2 NZLR 385 at 388.

- organisational or procedural flaws.

The following cases illustrate the public interest in promoting accountability when things go wrong: [W55001](#), [173291](#), [352879](#) and [180058](#).

What about 'wrongdoing' outside an agency?

Sometimes information will be sought about the suspected '*wrongdoing*' of a private individual or entity. This information may be held by an agency because its function is to inquire into the suspected wrongdoing, or to regulate the activities of those individuals or entities. In this case, the public interest is less about revealing the suspected wrongdoing, and more about demonstrating that the agency is properly discharging its regulatory function, or inquiring into the suspected wrongdoing, and taking appropriate steps in response.

Administration of justice

There is a public interest in the administration of justice. The '*administration of justice*' is about the proper and efficient working of the '*justice system*', and the important principles that underpin that system, including access to justice and procedural fairness. The '*justice system*' includes both civil and criminal law.

Often the safeguards to ensure that people can access the information they need for the administration of justice are built into the justice system itself. For instance, parties to civil proceedings may seek relevant information by way of discovery; and access to relevant information by criminal defendants is governed by the [Criminal Disclosure Act 2008](#). Indeed, the official information legislation has a specific reason for refusing requests by criminal defendants for official information that could be sought under the Criminal Disclosure Act.¹⁹

However, there are situations where the public interest in the administration of justice would be served by the disclosure of official information that has been requested.

Pursuing legal rights and remedies

There is a public interest in release of official information to enable individuals to pursue or defend their legal rights and remedies. However, it is important to remember that the OIA or LGOIMA may not be the best or fastest way of obtaining information for these purposes. The existence of other means of obtaining the information may be a factor the Ombudsman considers in their assessment of a complaint, including their application of the public interest test—see [Other means of obtaining the information](#), under [Factors that can affect the weight of the public interest](#). The following cases illustrate the public interest in enabling individuals to pursue or defend their legal rights and remedies: [172023](#), [W42175](#), [173434](#) and [302427](#).

¹⁹ See s 18(da) OIA and s 17(da) LGOIMA.

Procedural fairness

There is a public interest in the release of information to promote procedural fairness.²⁰ ‘Procedural fairness’ means that agencies must follow a fair and proper procedure when making decisions that impact on a person’s rights, interests or legitimate expectations. For instance, procedural fairness would apply to a decision to cancel a licence or benefit, to award a contract by tender, to discipline an employee, to impose a penalty, or to publish a report that damages a person’s reputation.

An important part of procedural fairness is the right to be heard. Fairness demands that a person be told the case to be met and given a chance to reply before the decision is made. It is particularly important that any negative or prejudicial information to be used in the decision making process is disclosed to the person.

Procedural fairness in the investigation of **complaints** requires that the person complained about be informed of the main points of any allegations or grounds for negative comment against them.

Note:

- It is not always the case that the full information requested must be disclosed in order to meet the public interest in procedural fairness. There may be other ways to strike the right balance between the competing public interests favouring withholding and disclosure—see [Other ways of getting the balance right](#).
- Information requests of this nature will quite possibly be made under the Privacy Act 1993, as well as, or instead of, the OIA or LGOIMA. The Privacy Act will apply to any personal information about a requester who is a natural person. The OIA or LGOIMA will apply to any other information.²¹
- If people aren’t given an opportunity to be heard, including information about the case to be met, and any potentially prejudicial information, the validity of the decision itself may be called into question. This may be done, for example, through the agency’s internal complaints process, or by making an Ombudsmen Act 1975 complaint to the Ombudsman.²²

²⁰ For more information on how to follow a fair process, see our [Good decision making](#) guide.

²¹ Note that there are special rules under the OIA and LGOIMA applying to:

- requests by corporate entities for personal information about themselves (see [Requests by corporate entities for their personal information](#));
- requests for internal decision making rules (see [Requests for internal decision making rules](#)); and
- requests for reasons for a decision or recommendation about the requester (see [Requests for reasons for a decision or recommendation](#)).

²² Provided the agency is subject to that Act.

The following cases illustrate the public interest in release of information to promote procedural fairness: [W40440](#) and [178237](#).

Health, safety and the environment

There is a public interest in keeping the public adequately informed of:

- any risk or danger to public health or safety, or the environment; and
- any measures to promote public health or safety, or protect the environment.

People may be entitled to this information so that they can make informed decisions about the degree of risk or danger that they find acceptable, and can then take steps to manage or mitigate any personal risks or dangers.

The following cases illustrate the public interest in release of information to keep the public adequately informed about health, safety and the environment: [178767](#), [323682](#) and [341821](#).

Irrelevant considerations

The following considerations are **not relevant** in assessing whether there is a need to withhold the information or in conducting the public interest test.

- Potential embarrassment to the Government or an agency.
- The fact that the information is technical or could be difficult to understand.
- The likelihood that the information will be seen out of context, misunderstood or misinterpreted.
- The likelihood that release will result in confusion or unnecessary debate.

Where an agency is concerned that the information may be misunderstood, it can always release other information and / or an explanatory statement to put what has been requested in context, and to help the reader understand and interpret it.

Factors that can affect the weight of the public interest

There are numerous factors that can affect the weight of the public interest in disclosure in a particular case. Some of the common ones are discussed below, and illustrated in the [case studies](#) at appendix 2 of this guide.²³

<p>The significance of the subject</p> <p>See cases 173160 and 339333</p>	<ul style="list-style-type: none"> Does the information relate to an issue of public significance (for example, the environment, health, safety, civil rights, social welfare, education, public funds etc)? This can increase the public interest in disclosure.
<p>The people affected</p>	<ul style="list-style-type: none"> How many people are affected by the information at issue? Does it affect the public at large, or a significant proportion of it? Does it affect an entire region or community, or a significant proportion of it? If lots of people are affected, this can increase the public interest in disclosure. Note, this doesn't mean there won't be a strong public interest in disclosure if the information only affects one person (the requester) or a few people. This is particularly so if the impact of release for that person or those people is particularly serious or significant. For examples of situations where the personal interest of the requester reflects a broader public interest in disclosure, see cases 172023 and 167380.
<p>The level of interest or debate</p>	<ul style="list-style-type: none"> What is the level of interest or debate about the subject of the information at issue? If the subject has generated public or parliamentary debate, this may increase the public interest in disclosure. Note, the absence of prior public or parliamentary debate doesn't necessarily diminish the public interest in disclosure. Just because the public is not yet aware of an issue, does not mean there are not important accountability or other public interest considerations at stake.

²³ Note that some of these same factors may be relevant in assessing the need to withhold the information.

<p>The level of disquiet, speculation or controversy</p> <p>See cases 173160 and 293402</p>	<ul style="list-style-type: none"> • What is the level of disquiet, speculation or controversy about the subject of the information at issue? • If the issue has generated public disquiet, speculation or controversy, the public interest in disclosure, in order to provide public assurance or improve public confidence, may be higher. • Note that even if the information does not validate or bear out the speculation or controversy, there may be still be a public interest in disclosure to provide public assurance.
<p>The extent of information in the public domain</p> <p>See cases 173160, 316020, 321631 and W55001</p>	<ul style="list-style-type: none"> • What information is already publicly available about the subject of the information at issue? • If similar information is already available and the requested information would not add significantly to it, the public interest arguments about furthering debate and increasing accountability may carry less weight. • If there is an absence of information in the public domain, or the requested information contains new material that would help inform public debate or promote accountability, then the public interest in disclosure may carry more weight.
<p>The need to provide the ‘full picture’, or to correct inaccurate, incomplete or misleading information</p> <p>See cases 173160, 316020 and 339333</p>	<ul style="list-style-type: none"> • Does the information already in the public domain present the ‘<i>full picture</i>’, or could it be seen as inaccurate, incomplete or misleading in any respect? • Partial or selective release of information may increase the public interest in disclosure of the remainder to provide a ‘<i>full picture</i>’. • The public interest in disclosure may be heightened if the publicly available information is inaccurate, incomplete or misleading.
<p>The amount of public money involved</p>	<ul style="list-style-type: none"> • If accountability for expenditure of public money is a factor, what is the amount involved? • Where substantial or significant sums of public money are involved, the public interest in disclosure may be heightened.

<p>The nature and seriousness of the ‘wrongdoing’ or what went wrong</p> <p>See cases 316020, 180058, W55001 and W35667</p>	<ul style="list-style-type: none"> • If accountability for things having gone wrong is a factor, what is the nature of the ‘<i>wrongdoing</i>’, or what went wrong, and how serious is it? • For example, does it concern poor performance (at one end of the scale), serious misconduct, or something that resulted in injury or death (at the other end of the scale)? Does it have personal relevance for the ‘<i>wrongdoer</i>’ only, or did it impact more widely on the agency or other people? • The more serious the wrongdoing or what went wrong, the higher the public interest in disclosure.
<p>The seniority of the individuals involved</p> <p>See cases 321631, 180058 and W35667</p>	<ul style="list-style-type: none"> • The public interest in accountability may be higher depending on the seniority of the individuals involved. • The more senior the level of the individuals within the state sector, the higher the expected standards of accountability.
<p>The age, currency and relevance of the information at issue</p>	<ul style="list-style-type: none"> • How old is the information? Does it relate to current events or is it of historical interest only? Does it relate to events or problems that are likely to recur? • If the information at issue is current and relevant, this may increase the public interest in disclosure. • At the same time, however, it is important not to diminish the public interest in access to historical information for research or other valid purposes.

The timing of the request

See case [339333](#)

- If the information at issue relates to a particular process (for example, a policy making process, a decision making process, or an investigation process), what stage has that process reached?
- The **nature** of the public interest in disclosure may be different depending on the stage that has been reached. For example, the public interest in disclosure to promote participation will be strongest before the relevant process has concluded. The public interest in disclosure to promote accountability will be strongest after the relevant process has concluded. Some processes (for example, policy-making processes) may have multiple stages, and there may be times when both participation and accountability are relevant public interest considerations.
- The **strength** of the public interest in disclosure may also differ depending on the stage that has been reached. For example, the public interest in disclosure of findings and conclusions may be stronger than the public interest in disclosure of untested facts and unproven allegations.
- Note that the official information legislation does not allow withholding solely on the basis that the information is incomplete or misleading. It may be that such information can be released without harm, and in the public interest, along with a statement explaining why it is incomplete or misleading—see [Irrelevant considerations](#) above.
- Note, also, that if a particular process has become unreasonably delayed, the public interest in disclosure of at least some information before that process has concluded may be stronger. For example, where a request for information about a long and protracted investigation is made before that investigation has been completed, there may be a public interest in disclosure of a progress report, including any preliminary findings and remedial action taken, in order to provide public assurance that matters are properly in hand.

<p>The purpose of the request</p> <p>See case 378663</p>	<ul style="list-style-type: none"> • Some uses of official information may be particularly socially beneficial, thereby increasing the public interest in disclosure. • For example: <ul style="list-style-type: none"> - Disclosure of information to enable Members of Parliament to perform their parliamentary and constituency roles may be in the public interest. - Disclosure of information to the news media, so that they may better inform the public, may be in the public interest. As the courts have recognised (in articulating the rationale for openness in judicial proceedings), the news media act as the ‘<i>surrogates of the public</i>’.²⁴ - Disclosure of information to researchers may serve the public interest in furthering research and knowledge development. - Disclosure of information to an interest group (for example, a community group, union, or non-governmental organisation) so it can effectively represent the interests of its members, may be in the public interest.
<p>Other means of obtaining the information</p> <p>See case 302427</p>	<ul style="list-style-type: none"> • Can the information be obtained from an alternative source which is reasonably open to the requester? For example, if the information is for court proceedings, can it be obtained by seeking discovery, including third party discovery? If so, this may weaken the public interest in disclosure under the OIA or LGOIMA. The decision as to whether the information is required for the purpose of the proceedings may be one the courts are best placed to determine.
<p>Other means of scrutiny or regulation</p> <p>See cases 316020, 321631 and W55001</p>	<ul style="list-style-type: none"> • It may be argued that, where issues of public concern are at stake, the existence of other means of scrutiny or regulation that could address them weakens the public interest in disclosure. Other means of scrutiny or regulation could include things like coroners’ hearings, investigations by complaints and enforcement agencies, public inquiries, and parliamentary or ministerial scrutiny. • The mere fact that other means of scrutiny are available and could be used does not in itself weaken the public interest in disclosure. • However, where those other means have been used or are being pursued, this may go some way to satisfying the public interest that would otherwise be served by disclosure. If, for example, a

²⁴ *R v Liddell* [1995] 1 NZLR 538 at 546-547.

report providing the conclusions or outcome of other means of scrutiny or regulation is publicly available, this may to some extent lessen the public interest in disclosing the information requested under the OIA or LGOIMA. Furthermore, if the other investigation is ongoing, the public interest may be better served by allowing it to continue without interference, rather than disclosing information prematurely.

- The questions to consider are:
 - how far the other means of scrutiny go to meet the public interest in any particular case; and
 - what information is available to the public by these other means?
- If the investigation and results are conducted in secret, this may increase the public interest in disclosure of some information under the OIA or LGOIMA.

Other ways of getting the balance right

As discussed earlier (see [How the public interest test works](#)), the proper application of section 9 of the OIA (section 7 of the LGOIMA) involves a balancing of the competing interests favouring withholding and disclosure. The result of that balancing exercise will not always be **full and unrestricted** disclosure of the **actual information** sought by the requester. There may be other ways that these competing interests can be met. Some of the common ones are discussed below.

Important notes

Remember that these alternative ways of getting the public interest balance right can only be justified where there would otherwise be *'good reason'* to withhold the information that has been requested.

Information must generally be made available in the way preferred by the requester.²⁵ Any decision to use these alternative ways, instead of providing full access to the information in the manner preferred by the requester, can be the subject of a complaint to the Ombudsman.

²⁵ See s 16(2) OIA and s 15(2) LGOIMA.

Deletions

An agency can release the information at issue with deletions.²⁶ For example, the public interest in disclosure may be met, and potential harm to privacy or confidentiality interests obviated, by making deletions to names and other identifying information.

Key documents

Where a request covers a range of information, an agency may decide to release the key public interest document(s). Often this will be in the nature of a final report, briefing, Cabinet paper etc, which is generally the most considered and complete analysis of the subject of the information. This **may** satisfy the public interest in release, but it will depend on whether the key documents provide the full picture.

Excerpts or summaries

An agency may decide to release an excerpt or summary of the information at issue in order to address the public interest.²⁷

For example, it could release the background, findings and recommendations of a report, while protecting detailed interview records. The agency must be very confident of the proper basis for withholding the complete information before it takes this route.

It is also important to ensure that any summary provided is full, fair and accurate. The adequacy of a summary may be tested by a complaint to the Ombudsman. For examples of cases where summaries were used see [340832 and 276668](#), [173291](#), [352879](#), [180058](#), [178237](#) and [316020](#).

Manner of release

An agency may decide to release information in a manner other than that sought by the requester. This can work well in conjunction with the imposition of [conditions](#) on the use, communication or publication of the information.

Inspection

The requester may be given a reasonable opportunity to inspect the information rather than receiving copies of it.²⁸ This often works well where the individual interests of the requester are what give rise to a wider public interest in disclosure. For an example of the use of inspection see case [167380](#).

²⁶ This is envisaged by s 17 OIA and s 16 LGOIMA.

²⁷ This is envisaged by s 16(1)(e) OIA and s 15(1)(e) LGOIMA.

²⁸ This is envisaged by s 16(1)(a) OIA and s 15(1)(a) LGOIMA.

Oral briefing

The essence of the information may be disclosed to the requester at an oral briefing. Again, this can be an effective means of meeting the requester's interest in the information, while minimising the harm that may arise from wider disclosure.

Release to a third party

The information may be disclosed to a trusted third party other than the requester. This often works well where there is a public interest in disclosure to meet the requester's purposes, but that interest can be met just as well by disclosure to a trusted third party.

For example, information is disclosed to the requester's lawyer, rather than the requester themselves. The agency may consider that the lawyer's obligation to adhere to certain professional and ethical responsibilities is sufficient to obviate any risk of harm from disclosure, while addressing the public interest in promoting access to justice.

For an example of release to a third party see case [W42175](#).

Conditions

An agency may decide to release information in order to address the public interest, but subject to conditions on its use, communication or publication.²⁹ Conditions can include things like:

- an embargo;
- a requirement that the requester keep the information confidential;
- a requirement that any discussion of the information should include reference to a contextual statement the agency has also provided; and
- a requirement to use the information only for a specific purpose.

For examples of the use of conditions see cases [167380](#), [172117](#), [360811](#) and [W42175](#).

It is important to remember that conditions are **not enforceable** under the official information legislation. Release of the information subject to a condition is therefore reliant on a relationship of trust and confidence between the agency and the requester, or the establishment of a formal contract or deed.

Release of other information

An agency may decide to release other information instead of, or in addition to, what has been specifically requested. Additional information may be released to put the requested

²⁹ The ability to impose conditions on the use, communication or publication of official information is implicit in s 28(1)(c) OIA and s 27(1)(c) LGOIMA.

information in its proper context, thereby minimising any potential harm from its disclosure. Alternative information may be released because it is considered to be a better way of serving the overall public interest. For example, see case [172023](#).

Release later—when the timing of the request is an issue

Sometimes it may be necessary to withhold official information because premature disclosure would **harm** an ongoing process. For example, premature disclosure may prejudice:

- the ability of Ministers or Cabinet to consider and decide upon policy advice tendered;³⁰
- the fair and efficient conduct of an investigation process.³¹

Where there is good reason to withhold official information at the time a request is made, an agency can consider releasing the information later, after the harm in release has abated, and when the public interest balance lies more clearly in favour of disclosure. This is a matter of good practice, rather than a statutory requirement.

If taking this course of action, the agency will still need to refuse the request under the applicable withholding ground(s). However, at the same time it can explain that in recognition of the public interest in disclosure, some or all of the information will be released once the relevant process has concluded. The agency can then release the information as soon as circumstances have changed. Such release may be done:

- proactively to the requester or the wider public (see [Proactive release](#) below);
- by offering to reconsider the request once circumstances have changed; or
- by inviting the requester to make a fresh request once circumstances have changed (note, this works best if the requester can be expected to know from other sources when circumstances have changed, and therefore when to submit a fresh request).

Although their request has been refused, the requester may be satisfied by knowing that the public interest in release has been recognised by the agency, and that they will receive some or all of the information in due course.

Information soon to be publicly available

The advice above covers the situation where there will be a substantive **harm** from premature disclosure of the information at issue. You might be wondering where section

³⁰ The relevant withholding ground being s 9(2)(f)(iv) OIA. For guidance on the application of this withholding ground visit our [official information legislation guides](#) page.

³¹ The relevant withholding ground in this context being s 9(2)(ba)(ii) of the OIA and s 7(2)(c)(ii) of the LGOIMA. Section 6(c) of the OIA and s 6(a) of the LGOIMA may also be relevant, but not in the context of discussing the public interest test, as these grounds provide conclusive reasons for withholding. For guidance on the application of s 9(2)(ba)(ii) of the OIA and s 7(2)(c)(ii) of the LGOIMA visit our [official information legislation guides](#) page.

18(d) of the OIA (section 17(d) of the LGOIMA) fits into this discussion. That section provides a reason for refusal where the information at issue *'is or will soon be publicly available'*.

The refusal grounds in section 18 of the OIA (section 17 of the LGOIMA) are **administrative** in nature. Section 18(d) of the OIA (section 17(d) of the LGOIMA) applies when release of the information is both **certain** and **imminent**, and release prior to that is therefore **unnecessary** and/or **administratively inconvenient**.

Section 18(d) of the OIA (section 17(d) of the LGOIMA) should not be used where the agency's real concern is that premature disclosure would harm one of the substantive interests protected in sections 6 or 9 of the OIA (sections 6 or 7 of the LGOIMA).

Proactive release

Proactive release happens when an agency decides to publish information of its own volition, instead of just responding to a specific request for that information under the OIA or LGOIMA. Usually it involves publication to the world at large via the agency's website. It can be planned well in advance, or prompted by receiving one or more OIA requests. Proactive release to the world at large is an excellent way of addressing strong public interest considerations in favour of disclosing official information. In addition, some agencies have developed *'disclosure logs'* where many of their responses to OIA or LGOIMA requests are proactively released.³² It is important to note that the protection for release of official information in good faith in response to a request is not available when an agency decides to proactively release official information.³³

The Ombudsman has previously recommended that:³⁴

Agencies should ensure they have a comprehensive policy concerning the proactive release of information they hold, which includes how to maximise the benefits of proactive release while also managing risks that may arise from the release of certain types of information.

Recording and giving reasons

The official information legislation doesn't say that agencies have to record or give their reasons for concluding that the public interest in release does not outweigh the need to

³² For example, the [New Zealand Transport Agency](#), the [Treasury](#), and the [Reserve Bank of New Zealand](#).

³³ See s 48 OIA and s 41 LGOIMA.

³⁴ Chief Ombudsman Dame Beverley A Wakem. [Not a game of hide and seek: Report on an investigation into the practices adopted by central government agencies for the purpose of compliance with the Official Information Act 1982](#). (December 2015) at 17.

withhold information when refusing a request.³⁵ However, it is **good practice** for agencies to adequately **document** their decision making process, including their application of the public interest test.³⁶ Doing so helps in the event that a requester seeks the grounds in support of the reasons for withholding,³⁷ or an agency has to justify to the Ombudsman its decision to refuse a request. It is also good practice for agencies to **explain** their application of the public interest test to requesters, even if the requester does not seek the grounds in support of the reasons for withholding. This should include the public interest considerations they have taken into account, and their reasons for concluding that those considerations did not outweigh the need to withhold. Doing so promotes transparency and helps to instil trust and confidence that the agency has taken a robust approach to the application of the withholding grounds.

The Ombudsman has previously recommended that:³⁸

Agencies should strengthen their procedures for considering, documenting and explaining to requesters the public interest factors considered when making a decision whether or not to withhold information under section 9 of the OIA.

Further guidance

For information on the application of the withholding grounds in section 9 of the OIA and section 7 of the LGOIMA see our [official information legislation guides](#).

For information about processing official information requests—including the form and manner of release, and template letters for conveying a decision—see our guides [The OIA for Ministers and agencies](#) and [The LGOIMA for local government agencies](#).

Our website contains searchable case notes, opinions and other material, relating to past cases considered by the Ombudsmen: www.ombudsman.parliament.nz.

You can also contact our staff with any queries about the public interest test by email info@ombudsman.parliament.nz or freephone 0800 802 602. Do so as early as possible to ensure we can answer your queries without delaying the response to a request for official information.

³⁵ See s 19(a)(i) OIA and s 18(a)(i) LGOIMA.

³⁶ The need to document reasons for decisions is discussed more generally in our guide to [Good decision making](#).

³⁷ See s 19(a)(ii) OIA and s 18(a)(ii) LGOIMA.

³⁸ Note [34](#) above, at 18.

Appendix 1. Public interest step-by-step work sheet

<p>1. The principle of availability</p>	<ul style="list-style-type: none"> Remember to start from the principle of availability—official information must be made available on request unless there is ‘<i>good reason</i>’ to withhold it.
<p>2. Identify the applicable withholding ground</p>	<ul style="list-style-type: none"> Is it necessary to withhold the information to protect, or avoid prejudice to, one of the interests listed in section 9(2) of the OIA (section 7(2) of the LGOIMA)? For help in making this decision, see our official information legislation guides.
<p>3. Identify the public interest in disclosure</p>	<ul style="list-style-type: none"> To help identify the public interest considerations favouring disclosure, consider the purpose of the request and the content and context of the information at issue (see How to identify the public interest considerations favouring disclosure). For example, would disclosure: <ul style="list-style-type: none"> - enable people to understand and debate issues, or participate in decision making processes, which affect them? - promote accountability of Ministers, agencies and people working in central or local government for how they: <ul style="list-style-type: none"> › make decisions and perform their functions? › spend public money? › take appropriate action when things go wrong? - promote the administration of justice, for instance, by: <ul style="list-style-type: none"> › enabling people to pursue their legal rights and remedies? › ensuring procedural fairness? - keep the public informed about risks and dangers to, or measures to promote, public health and safety or the environment? Are there any factors that could affect the weight of the public interest in disclosure, for example, the significance of the subject, the level of interest or debate, or the extent of information in the public domain?
<p>4. Assess the relative weight of these competing interests</p>	<ul style="list-style-type: none"> If the public interest in disclosure outweighs the need to withhold, the information must be released. If the public interest in disclosure does not outweigh the need to withhold, the information can be withheld. If the competing considerations are evenly balanced, the information can be withheld. This is because the public interest in disclosure must

	<p>outweigh the need to withhold.</p> <ul style="list-style-type: none"> • See our diagrams for a visual representation of the balancing exercise.
<p>5. Consider other ways of getting the balance right</p>	<ul style="list-style-type: none"> • Are there any alternative ways to strike the right balance between the need to withhold the information and the public interest in release? For example: <ul style="list-style-type: none"> - Release with deletions - Release of key documents - Release of excerpts or summaries - Release in a different manner - Release subject to conditions - Release of other information - Release later - Proactive release.
<p>6. Make your decision</p>	<ul style="list-style-type: none"> • For guidance on how to make and communicate your decision, as well as template letters, see The OIA for Ministers and agencies and The LGOIMA for local government agencies.

Appendix 2. Case studies

These case studies are published under the authority of the [Ombudsmen Rules 1989](#). They set out an Ombudsman’s view on the facts of a particular case. They should not be taken as establishing any legal precedent that would bind an Ombudsman in future.

Index

Case number	Year	Subject
172023	2005	Father’s immigration file <i>Private interests gave rise to a public interest—pursuing legal rights and remedies</i>
167380	2003	Photo of offender <i>Private interest gave rise to a public interest—opportunity to inspect on conditions</i>
175789	2008	Identities of contractors <i>Transparency</i>
173160	2005	Treasury costings of interest-free student loans policy <i>Participation—significance of the subject—level of disquiet, speculation or controversy—extent of information in the public domain—need to provide the ‘full picture’</i>
318858, 319224 and 319684	2011	Information about the Government’s proposed mixed ownership programme <i>Participation</i>
172117	2005	Report on suicide and the media <i>Participation—release on conditions</i>
360811	2015	Reports into prisoner deaths in custody <i>Participation—release on conditions</i>
339333	2014	Interim report into a Chinook salmon mortality event <i>Participation—accountability for making decisions and performing functions—significance of the subject—need to provide the ‘full picture’—timing of the request</i>
378663	2016	Legal opinions on interpretation of statutory term <i>Participation—accountability for making decisions and performing functions</i>
340832 and 276668	2014 2010	Reasons for decision not to prosecute <i>Accountability for making decisions and performing functions—release of summary information</i>

C225 and C228	1992	Information about expenditure of school money <i>Accountability for spending public money</i>
293402	2011	Identities of guests who dined at a council's expense <i>Accountability for spending public money—level of disquiet, speculation or controversy</i>
W55001	2007	Serious and sentinel event reports <i>Accountability when things go wrong—nature and seriousness of what went wrong—extent of information in the public domain—other means of scrutiny or regulation</i>
W35667	1997	Information about resignation following Cave Creek tragedy <i>Accountability when things go wrong—nature and seriousness of what when wrong—seniority of the individuals involved</i>
173291	2006	Information about an employment investigation <i>Accountability when things go wrong—release of summary information</i>
352879	2015	Information about an employment investigation <i>Accountability when things go wrong—release of summary information</i>
180058	2014	Information about an employment investigation <i>Accountability when things go wrong—nature and seriousness of the wrongdoing—seniority of the individual involved—release of summary information</i>
316020	2012	Information about an employment investigation <i>Accountability when things go wrong—extent of information in the public domain—need to provide the 'full picture'—nature and seriousness of the wrongdoing—other means of scrutiny or regulation—release of summary information</i>
321631	2012	Information about an employment investigation <i>Accountability when things go wrong—seniority of the individuals involved—extent of information in the public domain—other means of scrutiny and regulation</i>
W42175	2002	Landlords seeking address information of former tenants for the purpose of enforcing judgment orders <i>Pursuing legal rights and remedies—release to a third party on conditions</i>
173434	2006	Confirmation of debtor's removal from New Zealand for purposes of insurance claim <i>Pursuing legal rights and remedies</i>
302427	2011	Individual's immigration history <i>Pursuing legal rights and remedies—availability of discovery</i>

W40440	2001	Peer reviews in relation to a complaint against a health provider <i>Procedural fairness</i>
178237	2010	Complaint against a health provider <i>Procedural fairness—release of summary information</i>
178767	2009	Hazardous Activities and Industries List <i>Health, safety and the environment</i>
323862	2014	Engineering reports in respect of earthquake-prone buildings <i>Health, safety and the environment</i>
341821	2014	List of buildings requiring structural review <i>Health, safety and the environment</i>
290369	2015	Taser camera footage <i>Release of other information to address public interest</i>

Case 172023 (2005)—Father’s immigration file

A woman requested her father’s immigration file in order to make an application for citizenship in another country. Her request was refused on privacy grounds (section 9(2)(a) of the OIA), and she complained to the Ombudsman.

The Ombudsman gave an initial indication that withholding may not be necessary to protect the father’s privacy, given he had died quite some time ago (in the 1960s). He also considered the public interest in release. He found that, quite apart from the requester’s own private interest in obtaining the information, there was a strong public interest in the release of historical information about family members to assist people in pursuing their legal rights, including the right to apply for citizenship in other countries.

Back to [index](#).

Case 167380 (2003)—Photo of offender

The victim of a sexual assault requested a photo of the offender from the Police. The Police refused the request in order to protect the offender’s privacy (section 9(2)(a) of the OIA). A support group complained on the victim’s behalf to the Ombudsman. The group explained that the victim had never seen the offender’s face, and that not knowing what he looked like was seriously affecting her recovery.

The Ombudsman accepted that the privacy withholding ground applied. However, he also recognised the public interest in assisting victims of crime to recover from the trauma and move on with their lives.

The Ombudsman considered that a reasonable balance between the competing considerations favouring withholding and disclosure could be achieved by providing the

requester with reasonable opportunities to view the photo under supervision, on condition that no copies were taken and no-one other than the requester herself viewed the photograph.

Back to [index](#).

Case 175789 (2008)—Identities of contractors

As part of its financial review, the former Department of Labour was required to provide a select committee with information about its contracts valued at more than \$10,000. This included the name of the contractor, the type and cost of the service, and hourly or daily maximum rates. The Department provided the information, but withheld the names of the contractors who were natural persons. An MP's request for those names under the OIA was refused in order to protect the privacy of the contractors (section 9(2)(a) of the OIA). The MP complained to the Ombudsman.

The Chief Ombudsman accepted that releasing the names of the contractors would infringe their privacy because it would allow the amount paid to them to be determined. However, in her opinion, the privacy interest was outweighed by an overriding public interest in promoting accountability, transparency, and public confidence and trust in the integrity of the public sector. The Chief Ombudsman agreed with the following comments of the Auditor-General:³⁹

Impartiality and transparency in administration are essential to maintaining the integrity of the public sector. Where activities are paid for by public funds or are carried out in the public interest, Members of Parliament, the media, and the public will have high expectations. They expect people who work in the public sector to act impartially, without any possibility that they could be influenced by favouritism, or improper personal motives, or that public resources could be misused for private benefit.

As a general rule, the identities of contractors awarded public sector contracts (whether by tender or not) and the total cost of those contracts should always be disclosed in the public interest.

This case prompted the Chief Ombudsman to observe in her annual report 2008-2009:

The key principle is that there is a fundamental and overriding public interest in total transparency about who is awarded public sector contracts. Total transparency about who is awarded contracts enables the public to question any perceived conflict of interest or impropriety. While the possibility must be kept open that a case may arise where anonymity may be necessary, such a case has not yet been identified.

In this case, the Chief Ombudsman recommended disclosure of the contractors' names.

Back to [index](#).

³⁹ Office of the Auditor-General. *Managing conflicts of interest: Guidance for public entities*. (June 2007) at 10.

Case 173160 (2005)—Treasury costings of interest-free student loans policy

In the run-up to the 2005 general election the then Labour Government announced a policy commitment to abolish interest on student loans. The Treasury had completed some preliminary analysis of the policy at the Minister of Finance's request. Opposition researchers sought access to this analysis, and complained to the Chief Ombudsman when their request was refused. The Chief Ombudsman did not accept that the withholding grounds relied on applied to the Treasury costings of the policy (sections 9(2)(f)(iv) and 9(2)(g)(i) of the OIA). Even if they did, the Chief Ombudsman formed the opinion that the need to withhold would be outweighed by the public interest in disclosure.

The Chief Ombudsman noted that a general election is the central event in a constitutional democracy. At such time, the principles and purposes of the OIA assume even greater relevance. In his view, work done by the Treasury to put a cost on government policy proposals, or proposals advocated by political parties contesting an election, should be in the public arena in a way that enables voters to form their own opinions.

The Chief Ombudsman considered the extent of information in the public domain, and whether this addressed the public interest in disclosure to promote public participation in the election. He found that the release of certain information had gone some way to satisfy the public interest. However, the fact the Minister had withheld the remainder of the information had the effect of heightening the public interest in disclosure of that advice. This was because the decision to withhold some of the Treasury advice had created understandable public doubt about the integrity of the data which the Minister had released. The Chief Ombudsman observed that:

These doubts are unfair because they stem, not from the data..., but from suspicion about the reasons why contestable data ... [has] been withheld. Disclosure in my view would replace the suspicion with the opportunity for a fairer evaluation ... of the information currently before the public.

Disclosure would extend the available information about costs from a four to a fifteen year horizon. In the Chief Ombudsman's view, the public interest could only be met by release of the full information at issue. The public interest was also heightened because of the considerable cost of the policy (the annual impact by 2020 was estimated to range between \$527 million and \$924 million).

The Chief Ombudsman recommended disclosure of the information before the general election took place, so that voters could participate in the election on a more informed basis. You can read the full case note [here](#).

Back to [index](#).

Cases 318858, 319224 and 319684 (2011)—Information about the Government’s proposed mixed ownership programme

In the run-up to the 2011 general election the then National Government announced its commitment to pursue a ‘*mixed ownership model*’ in relation to certain state-owned assets. In essence, this meant partial privatisation of four state-owned energy companies, and a reduction in the Crown’s holdings in Air New Zealand. The Treasury was tasked with undertaking some preliminary work. The media and opposition MPs sought information about this work, and complained to the Chief Ombudsman when their requests were partially refused. The Chief Ombudsman accepted that sections 9(2)(f)(iv) and 9(2)(g)(i) of the OIA applied, and so went on to consider the public interest in disclosure.

The Chief Ombudsman referred to the public interest in participation recognised in [section 4\(a\)](#) of the OIA. For most people, there is no greater opportunity for political participation than in a general election. Voters have a fundamental right to be as well informed as possible before exercising their right to vote. There is an exceptionally strong public interest in disclosure of information that may help voters to decide how to exercise their vote.

Despite the strength of these general public interest considerations, the Chief Ombudsman was not persuaded that disclosure of the **actual information at issue** would materially assist voters. She therefore concluded there was good reason to withhold that information. You can read the Chief Ombudsman’s full opinion [here](#).

Back to [index](#).

Case 172117 (2005)—Report on suicide and the media

The Commonwealth Press Union (CPU) requested a report on suicide and the media from the Ministry of Social Development. The report was withheld because it was still being written. The CPU complained to the Ombudsman, explaining that the report was sought urgently to assist submissions to the Justice and Electoral Select Committee on the Coroners Bill (which became the Coroners Act 2006).

It emerged that the report had been prepared by a consultant, and was being edited by the Ministry before being published. Publication would come too late to assist the CPU in its preparation of submissions.

The Ombudsman conveyed his initial view that there was a very strong public interest in a special interest group such as the CPU having access to relevant information to assist submissions to a select committee on an issue of clear public interest. The Ombudsman suggested that the report be made available to the CPU on condition it was used only for the purposes of submissions to the select committee, and not released in advance of the Ministry’s planned public release date. The Ministry accepted the Ombudsman’s suggestion, and the report was couriered to the CPU in time to assist in its preparation of submissions.

Back to [index](#).

Case 360811 (2015)—Reports into prisoner deaths in custody

The Howard League asked the Department of Corrections for reports into the deaths of two prisoners in custody. The request was refused in order to protect the privacy of the deceased prisoners (section 9(2)(a) of the OIA), and the Howard League complained to the Ombudsman. It explained that the reports were sought in order to participate in the inquests.

The Chief Ombudsman consulted the Privacy Commissioner and the Chief Coroner before forming her opinion. Her opinion was that although the privacy withholding ground applied to parts of the reports, this was outweighed by the public interest considerations favouring disclosure:

I consider that there is a strong public interest in knowing that government agencies, responsible for the care of individuals such as prisoners, are ensuring the safe custody of residents, and acting appropriately when such serious incidents occur. There is also a public interest in organisations, like the Howard League, having access to [death in custody] reports in a controlled and timely manner so that they are able to contribute effectively at Inquests.

The Department's valid concerns about privacy could be addressed through a controlled and confidential release. Accordingly, the Chief Ombudsman recommended the reports be disclosed to the Howard League, subject to the following conditions:

- the copies of the reports were numbered and dated;
- the reports were provided on a confidential basis;
- the information contained in the reports could only be used for the purposes of preparing for and appearing before an inquest; and
- the copies were returned to the Department at the completion of the inquest.

Back to [index](#).

Case 339333 (2014)—Interim report into a Chinook salmon mortality event

A community association requested reports by the Ministry of Primary Industries (MPI) into the deaths of a number of salmon at a salmon farm. MPI disclosed its interim report in part, but withheld some information under sections 9(2)(b)(ii) and 9(2)(d) of the OIA. The Ombudsman found these sections applied to some but not all of the information; and that the need to withhold was in any event outweighed by the public interest in disclosure to promote participation and accountability.

In terms of **participation**, it was noted that the reason for the request was to enable the community association to submit to, and appear before, a board of inquiry scheduled to consider applications by the farm operator for district plan changes and resource

consents that would enable it to expand its operations.

The Ombudsman stated that participation in the board of inquiry process *'is undoubtedly a public interest activity'*. Disclosure of the information would have enabled the community association to participate more effectively in that process. It would also have contributed to the quality of public debate on a matter of public interest.

In terms of **accountability**, the Ombudsman found there was a significant public interest in the public knowing how the Ministry prudently carried out its regulatory functions in the area of food safety and disease control. He referred to the following statement by the Irish Information Commissioner relating to the food safety and disease control responsibilities of the Department of Agriculture and Food:⁴⁰

I consider that there is a significant public interest in the public knowing how the Department carries out its regulatory functions in the area of hygiene and food safety and the control of disease. I consider that the public, as the ultimate consumers of food products, has a legitimate interest in knowing information of the nature that is contained in these records.

The public interest in disclosure was heightened by the significance of the subject:

There can be no doubt of the significant public interest in matters of food safety, given the substantial statutory framework on this issue, and the swiftness with which the Ministry acted once it had been notified of the mortality event.

There was also a *'significant public interest in the public knowing the full picture'*:

Disclosure of the information would remove any unfounded suspicion that the Ministry in some way favoured the operator of the farm (or the aquaculture sector more broadly) over its food safety and biosecurity responsibilities. It would present the full picture of the Ministry's investigation. There was already a limited amount of information in the public domain. Withholding the information at issue, in relation to what was already in the public domain, may have served to exacerbate any concerns regarding the Ministry's role. Disclosure of the information may have helped to allay any unfounded concerns.

The Ombudsman concluded that the significant public interest in:

- enabling the public to effectively participate in these ongoing matters; and
- the public knowing how the Ministry discharged its regulatory functions in the area of food safety and biosecurity;

outweighed the need to withhold the information. You can read the Ombudsman's full opinion [here](#).

⁴⁰ Office of the Information Commissioner. 'ABC Ltd and DEF Ltd and the Department of Agriculture and Food'. Case 98198. Retrieved on 6 May 2016 from <http://www.oic.gov.ie/en/Decisions/Decisions-List/ABC-Ltd-and-DEF-Ltd-and-the-Department-of-Agriculture-and-Food1.html>.

Back to [index](#).

Case 378663 (2016)—Legal opinions on interpretation of statutory term

A researcher's application for ethics approval to conduct human fertility research was declined on the basis that it would involve 'use' of embryos. That decision was informed by legal opinions on the meaning of the term 'use' under the Human Assisted Reproductive Technology Act 2004.

The researcher requested a copy of the legal opinions, and complained to the Ombudsman when that request was refused in order to maintain legal professional privilege (section 9(2)(h) of the OIA). Although the Chief Ombudsman agreed that the opinions were legally privileged, he found the need to withhold in this particular instance was outweighed by the public interest in participation and promoting accountability of the statutory decision maker.

In relation to **participation** he stated:

Disclosure of the opinions at issue would enable citizens such as New Zealand human fertility researchers and fertility clinic patients to more effectively participate in the administration of the HART Act and any policy guidelines developed by ACART which impact significantly on them.

In relation to **accountability** he stated:

Disclosure would also promote the accountability of officials. Although statutory decision makers are not required to justify their decisions under the OIA (other than their obligations under section 19) the scheme and purposes of the OIA clearly envisage decision makers disclosing sufficient information to adequately explain the basis for decisions that impact on individual New Zealanders to promote their accountability.

The public interest in disclosure was heightened by the purpose of the request:

The research being conducted by Professor Farquhar and other researchers in her field is a matter of considerable public importance and interest. It seems to me that it is incumbent on the Ministry to do everything it can to assist researchers adopt correct procedures and to ensure that the best first hand information is made available. I can think of no plausible reason why the Ministry would seek to withhold from a senior health researcher advice, whether privileged legal advice or not, about the interpretation of a crucial term in the governing legislation.

You can read the full opinion [here](#).

Back to [index](#).

Cases 340832 (2014) and 276668 (2010)—Reasons for decision not to prosecute

In case **340832**, a requester sought the reasons why Police decided not to charge a particular individual with manslaughter, and instead preferred a lesser charge of careless use of a firearm. The information was withheld on the basis that it was legally privileged

(section 9(2)(h) of the OIA).

The Ombudsman accepted that section 9(2)(h) applied, but considered that there were significant public interest considerations favouring the disclosure of further information. The complainant and the public were entitled to a fuller explanation from the Police about why they decided to charge the individual with the lesser charge. Disclosure of a summary of reasons for this decision served to satisfy the public interest by increasing the transparency of the decision making process and promoting the accountability of the Police for their decision. You can read the full opinion [here](#).

In case **276688**, the surviving family of a victim of the Mangatepopo Gorge tragedy sought the reasons why Police decided not to prosecute the canyoning instructor. The information was again withheld on the basis that it was legally privileged (section 9(2)(h) of the OIA).

The Ombudsman accepted that section 9(2)(h) applied, but identified a strong public interest in the accountability of officials for the decision not to prosecute, and a wider interest in providing grieving families with the information in order to understand the tragedy that occurred. The Police acknowledged these interests and agreed to release a summary of the information.

Back to [index](#).

Case C225 and C228 (1992)—Information about expenditure of school money

A school received a request for minutes and reports of board meetings relating to the resignation of its Principal and Executive Officer. The request was refused in order to protect their privacy, and the requester complained to the Ombudsman. The Chief Ombudsman accepted that there was a need to withhold much of the information at issue. However, to the extent that part of the information related to the expenditure of public money, he felt the public interest in release outweighed the need to withhold.

There is a widely perceived public interest in officials having to account for their expenditure and guardianship of public money. It is clear that officials entrusted with the care of public funds have a duty not only to their employers in the first instance, but also to the wider community. There is much judicial weight to support the notion that officials must be above reproach in respect of the administration of public money. The public interest required disclosure because otherwise public officials may not be held accountable to the wider community for their actions. You can read the full case note on our website.⁴¹

Back to [index](#).

⁴¹ Search for 'C225' using our online library [Liberty](#).

Case 293402 (2011)—Identities of guests who dined at a council’s expense

Significant public controversy surrounded a fundraising event, at which certain unnamed private guests had dined at a council’s expense. A requester sought the identities of the guests, which were withheld for privacy reasons (section 7(2)(a) of the LGOIMA). The Chief Ombudsman concluded that the need to withhold this information to protect privacy was outweighed by the public interest in release to promote accountability for spending public money. Disclosure would:

- promote accountability of agencies and officials for entertainment and hospitality expenditure decisions;
- facilitate public understanding of the purpose of entertainment and hospitality expenditure;
- provide public assurance about the propriety of that expenditure; and
- ensure proper and prudent expenditure of public money through transparency of decision-making.

The public interest in disclosure was heightened by:

- the ‘*sensitive*’ nature of the expenditure (meaning expenditure which is unusual or provides a private benefit to a staff member additional to the business benefit of expenditure); and
- the controversy over the propriety of the expenditure which, if left unaddressed, may have eroded public trust and confidence in the council’s stewardship of public money.

For more information about requests for expense-related information, including identities of individuals, see our [Chief executive expenses guide](#).

Back to [index](#).

Case W55001 (2007)—Serious and sentinel event reports

A requester sought copies of ‘*serious and sentinel event reports*’ held by a district health board (DHB). These are investigation reports completed when something has gone seriously wrong, for instance, the injury or death of a patient. The Ombudsman accepted that the privacy and confidentiality withholding grounds applied (sections 9(2)(a) and 9(2)(ba) of the OIA). However, she also recognised a public interest in release to promote the accountability of the DHB for its management of individual cases:

...we are talking about a class of incidents in the public health system where something has gone seriously wrong. It seems to me that when one of these incidents happens, there is a public interest in knowing, in general terms at least, what went wrong, and what measures will be taken to prevent it happening again....

There is also a public interest in promoting public confidence that deficiencies, where

identified, are remedied, and a related public interest in there being a degree of oversight external to the organisation itself and the wider health system.

The Ombudsman found that figures relating to the incidence of, and significant costs associated with, adverse events increased the public interest in disclosure to promote accountability and public confidence.

The Ombudsman could identify no alternative information sources by which that public interest might be addressed. At the time, this stood in contrast to overseas systems with national serious and sentinel event reporting systems. While the DHB had released a study based on aggregate figures, this did not address the public interest in accountability for the DHB's management of individual cases.

The Ombudsman also considered other accountability mechanisms, such as the Health and Disability Commissioner and coroners' hearings, and whether these were sufficient to address the public interest. She commented that the Health and Disability Commissioner investigates and reports on complaints. However, this does not address the situation where a patient chooses not to make a complaint, or is unaware of the situation which might give them cause to make a complaint. She noted that coroners' hearings will only occur when a sentinel event results in a patient's death.

The Ombudsman concluded there was an '*information vacuum*' regarding adverse events generally and serious and sentinel events specifically. In these circumstances, the public interest in disclosure outweighed the need to withhold information about what happened in individual cases, and what corrective measures (if any) were taken. You can read the full case note on our website.⁴²

Following this case, a national incident management system was launched, and information about serious and sentinel events is now proactively released on an annual basis (see [Proactive release](#)).

Back to [index](#).

Case 173291 (2006)—Information about an employment investigation

A requester asked Child, Youth and Family (CYF) for the files relating to two staff disciplinary cases. CYF disclosed summary information and the requester complained to the Ombudsman. The Ombudsman accepted that the privacy and confidentiality withholding grounds applied (sections 9(2)(a) and 9(2)(ba) of the OIA). However, she noted that there were certain public interest considerations favouring disclosure of at least some of the information at issue.

Social workers interact with many vulnerable members of society. There is a public interest in ensuring that any allegations of impropriety or inappropriate behaviour are investigated fully and, where allegations are substantiated, appropriate action is taken.

⁴² Search for '55001' using our online library [Liberty](#).

Where allegations have been substantiated and some form of disciplinary action has been taken, there is a strong public interest in the disclosure of information describing, in general terms, the nature of the allegations and the nature of the disciplinary action taken, to promote the transparency of the investigation process and the accountability of CYF. As a result, an expanded summary was disclosed, including a brief description of the allegations involved, and the outcome of the disciplinary process.

Back to [index](#).

Case W35667 (1997)—Information about resignation following Cave Creek tragedy

An MP sought information about the resignation of the Department of Conservation's West Coast Regional Conservator in the wake of the Cave Creek tragedy. The request was refused on privacy grounds (section 9(2)(a) of the OIA), and the MP complained to the Ombudsman. The Ombudsman accepted that the privacy withholding ground applied to much of the detail, but identified strong public interest considerations favouring disclosure of some of the information. Apart from general accountability considerations for the expenditure of public money in relation to the resignation, in this case the nature of the tragedy, the role of the Regional Conservator, and the high profile of his resignation, called for added transparency. To meet these public interest considerations, the Department agreed to release information showing the general level of financial settlement reached with the Regional Conservator and the provision made for contingent liabilities, and the complaint was resolved. You can read the full case note on our website.⁴³

Back to [index](#).

Case 352879 (2015)—Information about an employment investigation

A requester sought information about an employment investigation into the conduct of a corrections officer. The Department of Corrections disclosed a summary of the information at issue, and the requester complained to the Ombudsman. The Chief Ombudsman accepted that the privacy withholding ground applied to the information at issue (section 9(2)(a) of the OIA). However, she also identified a strong public interest in release which was not met by the summary that had been disclosed. The allegations were very serious and the incident itself was reported in the media. The Chief Ombudsman considered that it was in the public interest that the Department should be accountable and transparent about its investigations involving allegations of staff misconduct. This included demonstrating that appropriate and timely disciplinary measures were initiated, particularly where the allegations had been proven, or admitted as was the case here. Generally, in such cases, the public interest in release of the information will be satisfied through the release of a summary of the investigation

⁴³ Search for 'W35667' using our online library [Liberty](#).

undertaken by the agency. However, in this case the Chief Ombudsman did not consider that the summary was adequate. The Chief Ombudsman proposed an alternative summary that outlined the allegations, the findings of the investigation into those allegations, the outcome of the investigation, and the timing of the corrections officer's resignation some four weeks after the investigation report was finalised.

Back to [index](#).

Case 180058 (2014)—Information about an employment investigation

A requester sought information about an employment investigation into a Police officer who was known to have been demoted. The Police refused the request in order to protect the officer's privacy and the requester complained to the Ombudsman. The Ombudsman accepted that the privacy and confidentiality withholding grounds applied to the information (sections 9(2)(a) and 9(2)(ba) of the OIA). However, he considered that *'there is a high level of public interest in how the Police deal with complaints against Police officers'*. The Commission of Inquiry into Police Conduct highlighted and supported public unease around issues of confidence and accountability in this area. In addition, recent cases involving the Police (drunk driving) and the military indicated a growing public concern to expose and condemn inappropriate intoxication-related behaviour in authority figures funded by the public purse to enforce the law and provide safety and security.

The Ombudsman took into account the following factors in assessing the weight of the public interest in accountability:

- the behaviour at issue did not justify criminal charges being laid;
- the behaviour at issue occurred at a Police event and did not affect any member of the public; and
- the officer was not of the most senior rank and therefore did not have the attendant highest level of accountability.

The Ombudsman recommended the release of summary information to establish that:

- the Police took all relevant steps to ensure that concerns about an officer's conduct were thoroughly investigated; and
- appropriate disciplinary action was taken as a result of the investigation.

Back to [index](#).

Case 316020 (2012)—Information about an employment investigation

A requester sought the file concerning an employment investigation into allegations that a Police officer had misused Police letterhead to avoid a parking fine. The request was refused on privacy and confidentiality grounds (sections 9(2)(a) and 9(2)(ba) of the OIA),

and the requester complained to the Ombudsman.

The Ombudsman found that the relevant withholding grounds applied, and the question was whether the public interest in disclosure outweighed the need to withhold the information to protect the privacy and confidentiality interests.

The Ombudsman noted that information about the investigation was reported in the media. He also noted that the information related to a matter—the integrity of the infringement offence process—in which there was a legitimate public interest. While the Independent Police Conduct Authority (IPCA) had investigated, they did not intend to report publicly. In light of these circumstances, the Ombudsman considered it appropriate for Police to release a statement about the outcome of the investigation, in order to fill the vacuum left by the information that was already in the public arena.

The Ombudsman considered the Police argument that public accountability was met through referral to the IPCA rather than through release of official information to the media. The entitlement to official information is not set aside because of the existence of the IPCA. Having said that, the involvement of a body such as the IPCA is relevant when assessing whether there is a public interest in release that outweighs a withholding ground that would otherwise apply. If a body such as the IPCA makes a public report on a matter this may well satisfy any public interest in further release of information. However, in this case the IPCA did not intend to make a public report.

Back to [index](#).

Case 321631 (2012)—Information about an employment investigation

A requester sought a copy of an independent review into the raising of a personal grievance against Housing New Zealand's chief executive. The request was refused on privacy and confidentiality grounds (sections 9(2)(a) and 9(2)(ba) of the OIA), and the requester complained to the Ombudsman.

The Ombudsman found that the relevant withholding grounds applied, and the question was whether the public interest in disclosure outweighed the need to withhold the information to protect the privacy and confidentiality interests.

The Ombudsman noted that the information related to allegations about how a chief executive of a public service department conducted themselves in office. He also noted that the matter had attracted public attention.

Expectations of conduct, behaviour, and professionalism on the part of chief executives are justifiably high. A report on a personal grievance involving a chief executive must be considered in a different light from such reports generally. There is a greater public interest in the transparency of how a personal grievance was dealt with in these circumstances than in the generality of cases.

The Ombudsman had regard to the information that was already in the public domain. He noted that the State Services Commissioner had initiated his own investigation, the

results of which were released. He found that this process of third party review satisfied the public interest in knowing more about a personal grievance than would otherwise be the case. The existence and subsequent operation of that process could be seen as obviating any residual public interest in release of a report which, in ordinary circumstances, would remain confidential to the participants.

Back to [index](#).

Case W42175 (2002)—Landlords seeking address information of former tenants for the purpose of enforcing judgment orders

A number of landlords requested current address information for their former tenants from the Department of Social Welfare. The Tenancy Tribunal had issued judgment orders against the former tenants (meaning the former tenants were found to owe money to their former landlords), but these could not be enforced without up-to-date address details. The requests were refused on privacy grounds and the landlords complained to the Ombudsman.

The Chief Ombudsman found that the privacy interests of the former tenants were outweighed by the public interest in release, to the extent that the information should be released directly to the Department for Courts, subject to the condition that the Department use the information only for the purpose of enforcing the requester's judgment order.

The identified public interest in release was that it would allow individual judgment creditors to pursue enforcement of Tribunal orders in their favour, preserve the integrity of the Tenancy Tribunal process under the Residential Tenancies Act 1986, and thereby maintain the proper administration of justice and promote respect for the law. The full case note is available on our website.⁴⁴ You can also read our guide on [Address information for the purposes of civil court proceedings](#).

Back to [index](#).

Case 173434 (2006)—Confirmation of debtor's removal from New Zealand for purposes of insurance claim

A motor vehicle finance company sought confirmation in writing from Immigration New Zealand that one of its clients had been deported. The confirmation was needed to enable the company to pursue a debt insurance claim. The request was refused on privacy grounds, and the company complained to the Ombudsman. The Ombudsman concluded that the client's modest privacy interest was outweighed by the public interest in release of the information to enable the company to pursue its civil right to make an insurance claim.

⁴⁴ Search for 'W42175' using our online library [Liberty](#).

Back to [index](#).

Case 302427 (2011)—Individual’s immigration history

A requester sought information about an individual’s immigration history in order to pursue a claim of defamation. The request was refused on privacy grounds and the requester complained to the Ombudsman.

The Chief Ombudsman accepted that the privacy withholding ground properly applied. She was not prepared to conclude that the public interest in disclosure outweighed the need to protect individual privacy because of the availability of discovery as an alternative means of obtaining information relevant to the defamation proceedings.

The Chief Ombudsman declined to pre-empt the Court’s decision on whether the interests of justice required the information to be made available for the purposes of the proceedings. That would be a matter for the Court to determine where discovery was sought and refused.

While the availability of discovery is not a basis for refusing a request for official information, the fact remains that the tests for the withholding of information under the OIA are not the same as the tests that apply to the circumstances in which discovery may be refused. In some cases information that might be required to be made available under the OIA may not be available through discovery, and in other cases discovery may give access to information that there is good reason to withhold under the OIA.

The Ombudsman distinguished the [landlord-tenant cases](#) discussed above, noting that the approach adopted in those cases stemmed from concerns about the enforceability of judgment orders obtained by landlords from the Tenancy Tribunal. In contrast, this case did not involve an already established legal right.

Back to [index](#).

Case W40440 (2001)—Peer reviews in relation to a complaint against a health provider

A dentist requested a copy of peer reviews relied on by the Health and Disability Commissioner (the Commissioner) in reaching a preliminary finding that the dentist had breached the Code of Health and Disability Services Consumers’ Rights. The Commissioner argued that release of full details would prejudice the obtaining of peer reviews in future.

The Chief Ombudsman did not accept that any of the withholding grounds applied, but even if they did, the need to withhold would be outweighed by the public interest in release. He commented that the interests of justice require that the person who is the subject of an investigation be provided with a full copy of any expert opinion which is relied upon, along with the identity of the opinion author. This will especially be so where the allegations may involve grave consequences for a practitioner’s professional career. In writing such reports, peer reviewers are providing their considered

professional opinions and should be willing to have them scrutinised by, or on behalf of, the practitioner involved. You can read the full case note on our website.⁴⁵

Back to [index](#).

Case 178237 (2010)—Complaint against a health provider

A doctor requested a copy of a complaint made against him to the Health and Disability Commissioner (the Commissioner). The request was refused on privacy grounds (section 9(2)(a) of the OIA), and the requester complained to the Ombudsman. Part of the complaint was transferred to the Privacy Commissioner, given that some of the information at issue was personal information about the requester that had to be considered by the Privacy Commissioner under the Privacy Act. The remaining information was considered by the Ombudsman under the OIA. The Ombudsman acknowledged the *'high public interest in adherence to the principles of natural justice and fairness'*, which had to be balanced against the privacy interests of the complainant. In this instance, however, the public interest in ensuring natural justice was met through release of a comprehensive summary of the allegations disclosed. There was no remaining public interest in disclosure because no investigation of the complaint was to be pursued.

Back to [index](#).

Case 178767 (2009)—Hazardous Activities and Industries List

A requester sought the *'Hazardous Activities and Industries List'* from the local council. This was a list of all sites where activities or industries had been carried out that are known to have the potential to cause land contamination. The request was refused on commercial and confidentiality grounds (sections 7(2)(b)(ii) and 7(2)(c)(i) of the LGOIMA), and the requester complained to the Ombudsman. The Ombudsman was not convinced that the withholding grounds relied on applied. He was prepared to accept the need to withhold some information in order to protect the privacy of individual land owners (section 7(2)(a) of the LGOIMA). However, he concluded that any need to withhold the information was outweighed by the public interest in disclosure. The Ombudsman identified a public interest in current and future owners of the properties being aware of the risk of potential land contamination. There was also a wider public interest in the public being apprised of information about sites where there may be a potential for contamination, so that they were in a position to assess for themselves whether there were any risks to the environment or their person. You can read the full opinion [here](#).

Back to [index](#).

⁴⁵ Search for 'W40440' using our online library [Liberty](#).

Case 323862 (2014)—Engineering reports in respect of earthquake-prone buildings

A requester sought copies of engineering reports obtained by a council from building owners following a review of earthquake safety. The reports were withheld on the basis that release would prejudice the ongoing supply of confidential information in future (section 7(2)(c)(i) of the LGOIMA). The requester complained to the Ombudsman.

The Chief Ombudsman accepted that the withholding ground applied, but considered that insufficient weight had been placed on the public interest in release. The public have a right to know about the safety of buildings prior to entry. The issue was whether the engineering reports needed to be released for the public to establish the safety of the buildings in question, or whether public safety could be maintained by other means.

Four of the ten engineering reports contained adverse findings in terms of the safety of the building. The Chief Ombudsman queried whether the council had any plans to use this information, for example, in relation to its powers under section 124 of the Building Act 2004 to take certain actions in relation to earthquake-prone buildings. The council advised that it had no such plans.

The Chief Ombudsman found that because the council did not propose to carry out any further evaluation of the buildings, despite the engineering reports raising cause for concern, *‘the public had a right to know that information existed to show that the buildings may be prejudicial to their health and safety’*.

In her view, the four adverse engineering reports ought to have been released, along with a statement to the effect that no public health or safety concerns were raised by the remaining engineering reports.

Back to [index](#).

Case 341821 (2014)—List of buildings requiring structural review

A request was made to the Ministry of Business, Innovation, and Employment (the Ministry) for a list of buildings that had been identified by a preliminary review to possibly have features in common with the defective Canterbury Television Building. The Ministry withheld the list in order to protect the commercial position of the building owners (section 9(2)(b)(ii) of the OIA), and the requester complained to the Ombudsman.

The Chief Ombudsman agreed that the commercial withholding ground applied, and that the need to withhold the information was not outweighed by the public interest in disclosure.

As in [case 323862](#) above, the Chief Ombudsman concluded that *‘the public have a right to know if buildings are unsafe prior to entry’*. However, the withheld list was not a list of buildings that were unsafe. It was a list of buildings that may have features in common with a building that was found to be unsafe.

Those buildings would be subject to further review and evaluation by local authorities. If

any buildings were confirmed to be earthquake-prone, the local authority could take immediate steps to inform the public by placing a notice on the building, and updating the Land Information Memorandum.

As the review of each specific building was conducted, the information about earthquake risk and resilience would be made available and allow the public to be accurately informed so that it could judge the known risk and act accordingly. The public interest in disclosing the preliminary list was not strong because some buildings on the list might not be considered earthquake-prone or to pose a risk to public safety, and those that did would be publicly notified by the local authority. You can read the full opinion [here](#).

Back to [index](#).

Case 290369 (2015)—Taser camera footage

A requester sought camera footage of 47 incidents where the Police discharged tasers (when the Police discharge a taser, a camera on the device automatically records the event). The request was refused on privacy grounds (section 9(2)(a) of the OIA), and the requester complained to the Ombudsman.

The Chief Ombudsman accepted that, in the absence of consent to release by the subjects of the footage, the privacy withholding ground applied. She agreed with the requester that there was a strong public interest in the release of information about the adequacy of the Police monitoring processes. However that was quite a different consideration to granting the requester access to view taser camera footage as a voluntary arbiter of the Police's compliance with its own procedures.

The Chief Ombudsman commented that the public interest could be met by the Police releasing other information about:

- the internal guidelines and instructions given to staff regarding the operation of tasers;
- the mechanisms and practices Police use to monitor the use of tasers by individual officers; and
- the processes by which the Police identify and address any failures in practice.

You can read the Chief Ombudsman's full opinion [here](#).

Back to [index](#).