

# Guidelines for dealing with OIA requests involving ministers

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## 2. Background and purpose

- 2.1 The parties to these guidelines are Pharmac and the Hon David Seymour, Associate Minister of Health.
- 2.2 These guidelines are effective immediately. It expires when the present Minister Hon David Seymour, Associate Minister of Health no longer holds that position.
- 2.3 The purpose of these guidelines is to set out how Pharmac and the Office of Associate Minister of Health will deal with *OIA requests involving the Minister* made to Pharmac.
- 2.4 *OIA requests involving the Minister* are ones where there is the potential for the Associate Minister of Health to be affected by release of the requested information because:
  - it relates to their functions or activities as a Minister; or
  - they may be required to prepare for the possibility of public or political commentary.
- 2.5 The operative version of these guidelines will be published on Pharmac website at  
<https://www.pharmac.govt.nz/news-and-resources/official-information-act/ombudsman-opinion-oia-timeliness-obligations-compliance-and-practice-in-pharmaceutical-management-agency-te-pataka-whaioranga>

## 3. Context and principles

- 3.1 Pharmac and the office of the Associate Minister of Health acknowledge the principle of availability which underpins the OIA and means that official

information must be made available on request unless there is good reason, in terms of the Act, for withholding it.<sup>1</sup>

- 3.2 Pharmac and the office of the Associate Minister of Health will apply these guidelines in a way that does not interfere with their statutory obligations to make and communicate decisions on requests for official information as soon as reasonably practicable and within 20 working days<sup>2</sup> (subject to extension only where necessary),<sup>3</sup> and to release official information without undue delay.<sup>4</sup>
- 3.3 The office of the Associate Minister of Health recognises that Pharmac is responsible for making decisions on OIA requests it receives, unless those requests are required to be transferred to the office of the Associate Minister of Health in accordance with [section 14](#) of the OIA.
- 3.4 Pharmac recognises that the office of the Associate Minister of Health may need to make, be involved in, or know about decisions on *OIA requests involving the Minister*.
- 3.5 Pharmac will work with the office of the Hon David Seymour to identify *OIA requests involving the Minister* and decide the appropriate mechanism for dealing with them:
  - transfer;
  - consultation; or
  - notification of the decision.
- 3.6 Pharmac and the office of the Associate Minister of Health acknowledge that this is a decision to be made on the facts of each case, and in accordance with the law, and not pursuant to any general policy or directive.

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<sup>1</sup> See [s 5](#) OIA.

<sup>2</sup> See [s 15\(1\)](#) OIA.

<sup>3</sup> See [s 15A](#) OIA.

<sup>4</sup> See [s 28\(5\)](#) OIA.

## **4. Notification of requests**

- 4.1 Pharmac will notify the office of the Associate Minister of Health of OIA requests received by Pharmac, however it will only provide a summary of the request and the broad category of requestor e.g. public, researcher, industry, media.

## **5. Transfer**

- 5.1 Pharmac will transfer all or part of an OIA request to the office of the Associate Minister of Health when that is required under [section 14](#) of the OIA—that is:
- when the requested information is not held by Pharmac but is believed by the person dealing with the request to be held by the Associate Minister of Health; or
  - when the requested information is believed by the person dealing with the request to be more closely connected with the functions of the Associate Minister of Health.
- 5.2 The office of the Associate Minister of Health acknowledges that, in the absence of these circumstances, transfer is not permitted and responsibility for deciding on the request rests with Pharmac.
- 5.3 The need for transfer will be determined on the facts of the particular case, with regard to the specific information at issue and the functions of the Associate Minister of Health and in consultation with the office of the Associate Minister of Health.
- 5.4 The Associate Minister of Health will likewise transfer all or part of an OIA request to Pharmac when that is required under [section 14](#) of the OIA.

## **6. Consultation**

- 6.1 Pharmac will work with the office of the Associate Minister of Health to identify requests requiring consultation.
- 6.2 Consultation may be required with the Associate Minister of Health where for example:
- they supplied the information;
  - it is about their functions or activities; or
  - release could affect their functions or activities or legitimate interests.
- 6.3 Pharmac will provide the office of the Associate Minister of Health with all information necessary for informed consultation, including the request, the information at issue, and the decision Pharmac proposes to take. Pharmac will provide an appropriate timeframe for consultation to take place, and in accordance with section 15(1) of the Official Information Act.
- 6.4 The office of the Associate Minister of Health will respond to all consultations as expeditiously as possible. The office of the Associate Minister of Health will

let Pharmac know if more time is required so that Pharmac can consider whether it is necessary to extend the maximum 20 working days for making a decision on the request.

6.5 The office of the Associate Minister of Health will provide appropriate input in response to Pharmac requests for consultation. Appropriate input means comments and suggestions regarding:

- the proper application of the withholding grounds and the public interest test;
- the release of additional information, including additional explanatory material to place the information that is being released in its proper context;
- the proactive release of the same information to others, provided there is no undue delay in providing that information to the requester.

6.6 The office of the Associate Minister of Health will not provide inappropriate input, such as raising irrelevant considerations (like political embarrassment), or asking or instructing Pharmac to act in a way that would be contrary to the requirements of the OIA, including withholding or delaying release of official information without any proper statutory basis.

6.7 Pharmac will consider the input of the Associate Minister of Health's office on an OIA request in good faith and with an open mind, before deciding whether that input provides a reasonable basis for changing its proposed decision on the request. Pharmac may proceed to make a decision on an OIA request if the office of the Associate Minister of Health does not respond to the consultation, or advise that further time is required.

## **7. Notification of decisions**

7.1 Pharmac will work with the office of the Associate Minister of Health to identify decisions requiring notification. Notification may be required where the requested information is for example:

- sensitive or controversial in nature; or
- likely to be published in the news media or debated in the House.

7.2 Notification to the office of the Associate Minister of Health will not delay the decision being communicated to the requester. It will be for the Associate Minister of Health's information only.

7.3 Pharmac will provide a copy of the information to be released via email to the Private Secretary (Health) where Pharmac believes that the release of the information may result in public comment.

## **8. Record keeping**

8.1 Pharmac and the office of the Associate Minister of Health will keep full and accurate records of interactions in relation to OIA requests, in accordance with

normal prudent business practice, as required by [section 17\(1\)](#) of the Public Records Act 2005.

## **9. Disputes**

- 9.1 Where disputes arise between the parties regarding the proper application of the OIA or these guidelines, these should be referred to the Chief Executive or Public Affairs and Government Services Manager of Pharmac and a nominated staff member within the office of Hon David Seymour

## **10. Assistance**

- 10.1 The Office of the Ombudsman offers an advisory service on the operation of the OIA. They can be contacted by email [info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz) or freephone 0800 802 602. The Office should be contacted as early as possible to ensure it can answer any queries without delaying the response to a request for official information.