



**Briefing Note: Ombudsman's findings against Ministry of Education
OIA decisions: 1 July – 31 December 2018**

To:	Hon Chris Hipkins		
Date:	15 March 2019	Priority:	Low
Security Level:	In Confidence	METIS No:	1181139
Drafter:	Mike Scott	DDI:	s 9(2)(a)
Key Contact:	Emily Fabling	DDI:	
Messaging seen by Communications team:	No	Round Robin:	No

Purpose of Report

The purpose of this paper is for you to:

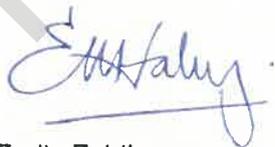
Note that on 13 March, the State Services Commission (SSC) published the latest round of six monthly OIA statistics on its website.

Note that during this period, the Ombudsman closed 14 investigations into our OIA decision making, and found against us on four occasions.

Note the Ministry of Education has used feedback from the Ombudsman to strengthen its decision making under the Official Information Act 1982 (OIA).

Agree that this Briefing will be proactively released as part of the standard monthly cycle of proactive release.

Agree / Disagree



Emily Fabling
Deputy Secretary
Strategy, Planning and Governance

15 / 03 / 2019.



Hon Chris Hipkins
Minister of Education

16 / 3 / 19

Background

1. The SSC publishes OIA statistics covering Crown entities and government departments subject to the OIA every six months.
2. For the period 1 July to 31 December 2018, the Ombudsman closed 14 investigations into the Ministry's decisions under the OIA. Two opinions found in our favour, four opinions found against us and eight investigations were withdrawn or discontinued.
3. A summary of the four opinions found against us is contained in the table below with details of the cases attached as **Annex 1**.

Requester	Basis of complaint to the Ombudsman	Opinion
Media	Unfair extension	Decision to extend the timeframe for response was unreasonable
Media	Unfair refusal	Ministry should not have refused the request
Company	Unfair extension	Decision to extend the timeframe for response was unreasonable
Public	Unfair extension	Decision to extend the timeframe for response was unreasonable

4. The Ombudsman did not make any recommendations in the three extension complaints. In the refusal complaint, the Ombudsman recommended that we release additional information to the requester. This recommendation was implemented.
5. As is standard, we have considered the Ombudsman's final opinion in each case and provided feedback to staff drafting OIA responses.
6. Improved internal reporting means that we are now able to more closely monitor the use of extensions and decisions under the OIA.
7. On average the Ministry responds to approximately 700 OIAs per year, this does not include responses drafted on behalf of your office. The Ombudsman investigations equate to 3.9% of the OIA average responses and the findings against equate to 1.1% of the average responses for the six month period.

Proactive Release

8. We recommend that this Briefing is proactively released as per your expectation that information be released as soon as possible. Any information which may need to be withheld will be done so in line with the provisions of the Official Information Act 1982.

Annexes

Annex 1: Ombudsman opinions against the Ministry of Education

Annex 1: Ombudsman opinions against the Ministry of Education

A. Media

Extension Complaint

1. The Ministry received a request, on 24 October 2017, for:
 - Names of officials who had signed or countersigned invoices to (Company A).
 - Information detailing concerns from officials about (Company A) and its directors.
 - Details of conflict of interest disclosures by officials relating to (Company A).
2. The information requested was sensitive in nature as it concerned an alleged conflict of interest between a Ministry employee and a contractor.
3. On 16 November 2017, the Ministry extended the time limit for reply by 20 working days to 19 December 2017 as the request necessitated a search through a large quantity of information and the Ministry also needed to undertake consultations before providing a response.
4. A decision on the request was provided to the requester on 27 November 2017
5. On 27 November 2017, prior to receiving the Ministry's response, the requester complained to the Ombudsman that the Ministry was behaving in a deliberately obstructive manner by delaying its response until Christmas week.
6. The Ombudsman opened a preliminary inquiry on 6 December 2017 and formally notified that he would investigate the matter on 18 January 2018.
7. On 10 August 2018, the Ombudsman formed a final opinion that the Ministry's decision to extend the timeframe for response was unreasonable.
8. The Ombudsman held that the delay appeared to be caused, not by the necessity to a search through a large quantity of information but the fact that the request (due to its nature) was escalated and managed at a senior level rather than through the Ministry's normal OIA response process.
9. No recommendation was made by the Ombudsman.

B. Media

Refusal Complaint

10. In addition to the requester's extension complaint above, a further complaint was made on 21 December 2017 regarding the Ministry's decision to refuse details of staff appointment dates on privacy grounds (section 9(2)(a) of the OIA).
11. During the course of the investigation, the Ministry released the employment start dates and details of the employees conflict of interest declarations.
12. The Ombudsman's final opinion found that the Ministry should not have refused the request.
13. A recommendation was made to release additional information beyond that already released during the investigation. This recommendation was implemented.

C. Private Company
Extension Complaint

14. On 17 January 2018, we received a request about an unsuccessful proposal submitted for a Ministry Request for Proposal (RFP). The requester asked that the request be treated with urgency, identifying that they considered the information to be time sensitive, as the RFP process was ongoing.
15. On 14 February 2018, we responded to the requester explaining that an extension to 15 March 2018 was required due to consultation. The requester contacted us the same day, reiterating their request for urgency and asking that the RFP process be delayed until three weeks after the information had been provided to them.
16. The requester was advised that we had considered their request for urgency, but had decided to treat their request within the same timeframes as all requests received. We considered the urgent provision of the information would not change the options available to the requester, and that the RFP process would not be halted or delayed.
17. On 23 February 2018, the requester complained to the Ombudsman about our decision to extend the timeframe for responding to their request for official information, and to decline to treat their request with urgency.
18. We released ten documents to the requester on 15 March 2018. The information was accompanied by a nine-page response letter, which provided further explanatory information.
19. The Ombudsman found that our decision not to treat the request with urgency appeared reasonable, in the circumstances. It was noted that the requester's position did not appear to be affected by the timing of the OIA response, and that the requester would have had time to seek advice on the information prior to the conclusion of the RFP process.
20. We were unable to persuade the Ombudsman that consultation was necessary, or that the request was actioned in a timely manner which may have allowed consultation to occur within the original 20 working day timeframe. As a result, the Ombudsman formed a final opinion that the decision to extend the timeframe was unreasonable.
21. No recommendation was made by the Ombudsman.

D. Member of the Public
Extension Complaint

22. On 26 February 2018 the Ministry received a request for copies of enrolment scheme letters sent under section 11H of the Education Act to three schools. The information was requested with urgency.
23. On 23 March 2018 we advised the requester that an extension to 4 April 2018 was required due to consultation.
24. The requester complained to the Ombudsman, on the same day, about our decision to extend the timeframe for responding to their request.
25. The request was eventually refused on the basis that the documents did not exist (section 18(e) of the OIA).

26. We advised the Ombudsman that consultation was undertaken in order to provide further contextual information to the requester about the information they were seeking. The requester was concerned about the process to implement an enrolment scheme and we were wanting to be helpful by providing some clarity around the process and background information to explain the situation which applied to the three schools.
27. The Ministry's efforts to provide the requester with a contextual statement were noted, however, the OIA does not provide for an extension to be sought on this basis.
28. The Ombudsman determined that, given the specified documents did not exist, consultation was not necessary in order to make a decision on the request. He formed the opinion that the Ministry's decision to extend the timeframe for response was unreasonable.
29. No recommendation was made by the Ombudsman.

Proactively Released