

Local Government Official Information and Meetings Act 1987

Guide for local authorities
and requesters on accessing
official information



Introduction

New Zealand adopted a freedom of information regime with the passage of the Official Information Act 1982. But its provisions were confined to Public Service departments and a number of other Central Government agencies.

It was only with the passing of the Local Government Official Information and Meetings Act 1987 (which came into force on 1 March 1988) that freedom of information was extended to Local Government as well as Central Government.

The 1987 Act's provisions applying to Local Government are largely identical to the earlier Official Information Act's provisions, with only the omission of provisions peculiar to Central Government (for example, those relating to international relations and constitutional conventions) and the addition of provisions specially applicable to Local Government (for example on consideration of applications for resource consents). The 1987 Act also sets out comprehensive rules for the publication of matters that are to be considered at meetings of local authorities and other agencies and for the manner in which these meetings are to be conducted.

This booklet describes how the 1987 Act applies to requests for official information that is held by a local authority or any other body that is subject to that Act.



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Making a request for official information

Who may make LGOIMA requests?

Any person may make a request for official information under LGOIMA (s 10(1) LGOIMA).

Who can you ask?

Any local authority or public body listed in Schedule 1 of the LGOIMA must comply with the Act when responding to requests for official information. They include:

- regional councils
- territorial authorities
- community boards
- trust boards
- airport authorities
- licensing trusts
- a committee of the whole local authority
- any committee or subcommittee or standing committee or special committee or joint standing committee or joint special committee which the local authority is empowered to appoint under its standing orders or rules of procedure or under any enactment or Order in Council constituting the local authority or regulating its proceedings

What can you ask for?

Official information means **any information held** by a local authority as defined in the LGOIMA.

Official information is not limited to documentary material, and includes **material held in any format**, including:

- written documents, reports, memoranda, letters, notes, emails and draft documents;
- non-written documentary information, such as material stored on computer, video or tape recordings, mobile devices;
- information which is known to an agency but which has not yet been recorded in writing or otherwise.

It does not matter where the information originated, or where it is currently located, as long as it is **held** by the local authority. For example, the information could have been created by a third party and sent to the local authority for use. The information could be held in the memory of an employee of the local authority.

Information held by elected members

LGOIMA applies to information held by the Mayor and councillors in their capacity as elected members of the local authority (s 2(3) LGOIMA).

Information held by officers and employees

Information which an officer, employee or member of a local authority holds in their capacity as an officer, employee or member is deemed to be held by the local authority (s 2(3) LGOIMA).

Information held in personal capacity

Official information does not include information held by a member or official in their **personal capacity**. However, if the information was originally obtained by the member or official in their personal capacity, but has then been used by that person in their official capacity, then it would be held by that person in their official capacity, and so would be official information that can be requested under the LGOIMA.

Information held by independent contractors

Information which is held by an independent contractor to a local authority, and which the local authority is entitled to access under the contract, is deemed to be held by the local authority and can be requested under the LGOIMA (s 2(6) LGOIMA).

How to ask

There is **no set way** in which a request must be made.

A LGOIMA request is simply made by a person asking for access to official information a local authority holds.

- A request does not need to be in writing.
- The requester does not need to refer to LGOIMA.
- The requester does not have to fill out a particular form before a LGOIMA request must be considered.

However, the information requested must be *“specified with due particularity”* (s 10(2) LGOIMA). This means that the person receiving the request must be reasonably able to identify the information requested.

If the local government authority cannot reasonably determine what information is being requested, then there is a duty on the local authority to give reasonable assistance to the requester to make a request in a manner that is specified with due particularity (s 11 LGOIMA).

Reasonable assistance is more than telling the requester that the request is not specific. Having regard to the purposes of the Act and to the principle of availability of information, all reasonable steps should be taken to provide assistance. The aim of the assistance should be to enable the requester to refine the request so that it is specific enough for the local authority to identify the information sought.

Asking questions/seeking opinions

For LGOIMA to apply the information must be held by the local authority concerned. **There is no obligation to form an opinion or create information** to answer a request (although it may still be administratively reasonable to provide a response). If a requester seeks information by asking a question, there is a distinction between:

- Questions which can be answered by providing information already known to and held by the local authority (official information); and
- Questions which require the agency to form an opinion or provide an explanation and so create new information to answer the request (not official information)

If requests are more in the form of questions about an issue the local authority is dealing with, it is often unlikely to be a request for information already held by the local authority. In such cases, the request will not be considered under the LGOIMA but rather considered in accordance with the local authority’s policy on responding to general correspondence.

Tips for phrasing requests

Sometimes, requests cover large amounts of information because the requester does not know exactly what type of information they are most interested in receiving or does not know how that information is held by the local authority. Requests which are unclear or are too broad may result in unnecessary delays, charges, or even refusals.

- Find out about the process first – who is involved, what stage has it reached, when are key decisions or milestones planned, what other agencies are involved that may also hold relevant information;
- Be as clear and specific as possible about the information you are seeking:
 - if it is a particular document, name it;
 - if you are not sure of its name, describe it with reference to author, date, content and/or subject matter;
 - if it is information on a particular topic or subject, explain in detail the information you are seeking you do not have to say why you want the information or what you intend to do with it, but sometimes providing this explanation may be helpful to the agency in identifying all the relevant information they hold that you would like to receive;
 - if you don't want to receive certain types of information (for example, internal emails or draft versions of documents) make that clear in your request;
 - if you are seeking reasons why a decision or recommendation was made about you, say so. You may be entitled to a statement of reasons created by the agency rather than having to request information from it that it may not hold;
- Prioritise the order in which you wish your requests to be answered if you are making multiple requests;
- If you need the information urgently, give the reasons why and the timeframe within which you wish to receive it;
- Advise whether you have any concerns with your identity being disclosed to any third parties should the agency wish to consult them before making its decision on the request;
- Indicate if you are happy to provide the information in an alternative form e.g. oral briefing, viewing, summary;
- Provide your contact details and, if you are happy to discuss your request with the agency, invite them to do so.

Risks with keeping requests too broad

- the local authority could decide your request hasn't met the threshold for being a LGOIMA request "specified with due particularity" that they must respond to;
- the response can take a long time as extensions of the original maximum timeframe for responding may be reasonably required;
- you could be faced with charges for the collation and supply of all the information caught within the scope of your request;
- you can end up with a large amount of information that you never wanted;
- the local authority might decide it would impair their efficient administration to give you the information in the form you prefer;
- your request for the information may be refused on the basis that the information cannot be made available without substantial collation and research.

Key provisions and obligations under LGOIMA

Section 4 – Purposes of LGOIMA

- a. *“To **provide for the availability to the public of official information** held by local authorities and to promote the open and public transaction of business at meetings of local authorities, in order –*
 - i. *To enable more effective **participation** by the public in the actions and decisions of local authorities; and*
 - ii. *To promote the **accountability** of local authority members and officials, –*
*and thereby to enhance **respect for the law** and to promote **good local government** in New Zealand;*
- b. *To provide for proper access by each person to official information relating to that person;*
- c. *To **protect official information and the deliberations of local authorities** to the extent **consistent with the public interest** and the preservation of personal privacy.”*

Section 5 - The Principle of Availability

*“The question whether any official information is to be made available ... under this Act, shall be determined...in accordance with the purposes of this Act and the principle that **the information shall be made available unless there is good reason for withholding it**”*

Section 10 - Requests

1. *“**Any person** may request any local authority to make available to that person any specified official information.*
- ...
2. *The official information requested shall be specified with **due particularity** in the request.*
3. *If the person making the request asks that that request be treated as urgent, that person shall give that person’s reasons for seeking the information urgently”.*

Section 11 – Assistance

*“It is the duty of every local authority to **give reasonable assistance** to a person who –*

- a. Wishes to make a request in accordance with section 10 of this Act; or*
- b. In making a request under section 10 of this Act, has not made that request in accordance with that section; or*
- c. Has not made that person’s request to the appropriate local authority or Department or Minister of the Crown or organisation, –*

to make a request in a manner that is in accordance with that section or to direct that person’s request to the appropriate local authority or Department or Minister of the Crown or organisation.”

Section 41 – Protection Against Certain Actions

1. *“Where any official information is made available in good faith pursuant to ... this Act ...-*
 - a. **no proceedings** civil or criminal, shall lie against the local authority or any other person in respect of the making available of that information, or for any consequences that follow from the making available of that information.*

...
2. *The making available of, or the giving of access to, any official information in consequence of a request made under...this Act shall not be taken, for the purposes of the law relating to defamation or breach of confidence or infringement of copyright, to constitute an authorisation or approval of the publication of the document or of its contents by the person to whom the information is made available or the access is given.”*

Key timeframe obligations

A local authority's legal timeframe requirements for responding to requests for official information are to:

- **transfer** a request (if necessary), **promptly** and **no later than 10 working days** after the request is received;
- make a **decision and communicate it** to the requester ***“as soon as reasonably practicable”*** and **no later than 20 working days** after the request is received; and
- **release** any official information it has decided to release ***“without undue delay”***.

Local authorities and requesters should note that:

- the distinction between the time requirements above can be important especially when responding to large requests. Usually in practice, the decision and the information will be sent to the requester together. However, sometimes that may not be possible;
- when notifying requesters of the decision on their request, the phrase *“as soon as reasonably practicable”* sets out a local authority's primary legal obligation. The reference to *“20 working days”* is not the de-facto goal but the absolute maximum (unless it is extended properly).

How to count time

“Working Days” means any day that ***is not*** a Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, Queen's Birthday, Waitangi Day or a day between 25 December and 15 January inclusive.

A regional anniversary day is a working day for the purposes of the official information legislation.

“Day 1” is the first working day ***after*** the day on which the request is received, irrespective of whether the agency has recognised it as a request for official information.

NB A working day calculator is available on our website: www.ombudsman.parliament.nz.

Extending the maximum time limits

Extensions of the maximum time limits for transferring, and making and communicating decisions on requests may be made – but only if certain criteria are met:

- the extension must be for *“a reasonable period of time having regard to the circumstances”*;
- any extension decision must be communicated within 20 working days after the day on which the request was received;
- extensions can only be made if:
 - the request is for a large quantity of information or necessitates a search through a large quantity of information *and* meeting the original time limit would unreasonably interfere with the operations of the agency; or
 - consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit;
- a requester must be advised:
 - that the local authority has decided to extend the time limit;
 - the specific period of the extension;
 - the reasons for the extension;
 - any other necessary information; and
 - that the requester has a right to complain to the Ombudsman about the extension decision.

NB *“A reasonable period of time”* is not defined in the legislation – what amounts to a reasonable period of time to make the decision on the requested official information will depend on the circumstances of the particular case.

Requests for urgency

Requesters may ask a local authority to treat their request as urgent. The LGOIMA requires that any request for urgency include the person's reasons for seeking the information urgently. When providing a local authority with reasons why they wish their request to be treated urgently, requesters should be mindful of Chief Justice Eichelbaum's comments:

*"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 i.e. between what is interesting to the public and what it is in the public interest to be made known"*

Eichelbaum CJ, *TV3 Network Services Ltd v Broadcasting Standards Authority* [1995] 2 NZLR 720, 733

The local authority must then comply with its legal obligations to:

- make a **decision and communicate it** to the requester **"as soon as reasonably practicable"** and **no later than 20 working days** after the request is received; and
- **release** any official information it has decided to release **"without undue delay"**.

The reasons for urgency may affect the local authority's assessment of what is a reasonably practicable timeframe for responding to the request in the particular circumstances.

Transfers - a mandatory requirement in certain circumstances

A local authority that receives a request *must* transfer that request to another agency that is subject to the OIA or LGOIMA (including Ministers), if the information to which the request relates:

- is not held by the local authority but is believed to be held by another local authority, Department, Minister or organisation; or
- is believed to be more closely connected with the functions of another local authority, Department, Minister or organisation.

In the absence of these circumstances, the local authority that receives the request must make the decision on it. However, this does not prevent a local authority consulting other interested parties before making the decision.

The following rules apply to transfers:

- transfers will only be valid for one of the two reasons listed above;
- transfers must be made **"promptly"** and, in any case, no later than 10 working days after the request is received (unless a valid extension is made); and
- the requester must be informed that the request has been transferred.

2013 Working day calendar

January 2013

Mo	Tu	We	Th	Fr	Sa	Su
		1	2	3	4	5
	7	8	9	10	11	12
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February 2013

Mo	Tu	We	Th	Fr	Sa	Su
					1	2
					3	
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

March 2013

Mo	Tu	We	Th	Fr	Sa	Su
					1	2
					3	
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

April 2013

Mo	Tu	We	Th	Fr	Sa	Su
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

May 2013

Mo	Tu	We	Th	Fr	Sa	Su
					1	2
					3	4
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

June 2013

Mo	Tu	We	Th	Fr	Sa	Su
						1
						2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

July 2013

Mo	Tu	We	Th	Fr	Sa	Su
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

August 2013

Mo	Tu	We	Th	Fr	Sa	Su
					1	2
					3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

September 2013

Mo	Tu	We	Th	Fr	Sa	Su
30						1
	2	3	4	5	6	7
					8	
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

October 2013

Mo	Tu	We	Th	Fr	Sa	Su
	1	2	3	4	5	6
	7	8	9	10	11	12
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

November 2013

Mo	Tu	We	Th	Fr	Sa	Su
					1	2
					3	
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

December 2013

Mo	Tu	We	Th	Fr	Sa	Su
30	31					1
	2	3	4	5	6	7
					8	
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

2013 Holidays and Observances:

1 Jan	New Year's Day	1 Apr	Easter Monday	25 Dec	Christmas Day
2 Jan	Day after New Year's Day	25 Apr	Anzac Day	26 Dec	Boxing Day
6 Feb	Waitangi Day	3 Jun	Queen's Birthday		
29 Mar	Good Friday	28 Oct	Labour Day		

Making a decision under LGOIMA

Processing a request

The key stages for a local authority reaching a good decision on a request would include the following:

- **Identify each request** for information made by the requester and which Act and set of rules apply (see below)
- **Find** the information requested
- Read the information applying the **principle of availability**
- **Note** any information you have concerns about
- **Then: Assess** your concerns and the information against the LGOIMA
 - Consult relevant parties to ensure you can articulate the concern accurately with reference to any provisions in LGOIMA you intend to rely on (see *Tips for consulting third parties*)
- **Advise** the requester of the decision

Which set of rules apply to LGOIMA requests?

Different parts of the LGOIMA contain rules that apply to certain requests. It is important to be aware of which rules to apply to requests in order to ensure that the right decision is made.

Part 2 The rules in Part 2 of LGOIMA apply to any request for access to official information that is not otherwise covered by the requests described below.

Part 4 Part 4 must be applied to any request by a body corporate seeking information about itself

Part 3 Part 3 contains the rules to be applied by a local authority when considering requests for:

- access to an agency's policies, guidelines or rules for making decisions that would affect a person;
- a statement of reasons why a decision or recommendation was made about the requester

Privacy Act

The Privacy Act applies to any request made by an individual seeking access to personal information about themselves

Information not covered by the request

Sometimes a document that is being released in response to a request also includes other information that is not covered by the request. A local authority's options include:

- releasing the document in its entirety; or
- deleting the information in the document not covered by the request and advising the requester accordingly in the covering letter.

Requirement to release in the format preferred by the requester

Where the information requested is comprised in a document, it can be made available in a number of ways which are set out in section 15 of LGOIMA, namely:

- giving the requester a reasonable opportunity to inspect the document
- providing the requester with a copy
- arranging for the person to hear or view sounds or visual images
- giving an excerpt or summary of the contents
- providing the information by way of an oral briefing
- providing a written transcript.

Local authorities are required to make information available to requesters in the way they prefer unless doing so would:

- impair efficient administration;
- be contrary to a legal duty the agency has regarding the document at issue; or
- prejudice the interests protected by certain provisions in the legislation.

If information is not provided in the way preferred by the requester, the agency must explain:

- the reason for not providing the information in the way preferred; and
- the grounds supporting that reason.

Releasing information subject to a charge

Local authorities may charge for the **supply** of information under LGOIMA (section 13(1A)). They cannot charge for the time it takes to consider whether to release or withhold the requested information. In other words, a local authority should not consider whether and how much to charge for the release of information **until it has made a decision** whether (and to what extent) information can be made available.

Where the local authority has prescribed a charge for particular information, any charge for supplying it in response to a LGOIMA request must not exceed that prescribed amount. However, where there is no prescribed amount, any charge must be “reasonable” and “regard may be had to the cost of the labour and materials involved in making the information available...”. A local authority should also consider whether waiver of any proposed charge is reasonable in the particular circumstances.

Where a local authority decides to charge for the provision of official information, it should advise the requester:

- of the decision to charge;
- the estimated amount of the charge;
- how the charge has been calculated;
- whether all or part payment is required in advance; and
- that they have the right to seek a review by an Ombudsman of the estimated charge.

Where the estimated charge is substantial, the local authority should give the requester an opportunity to refine the scope of the request in order to reduce or remove the need to charge.

The Ministry of Justice has published “*Charging Guidelines for Official Information Act 1982 Requests*”. These guidelines set out the kinds of circumstances which may warrant waiver or reduction of a charge. They are available from the Ministry’s website, www.justice.govt.nz, by searching under “*publications*”. Successive Ombudsmen have taken the view that the standard charging regime set out in the government guidelines is reasonable in most cases.

Releasing information subject to conditions

The LGOIMA implicitly recognises that where a request for information could otherwise be refused, it may nevertheless be made available to the requester subject to the agreement to certain conditions. Usually these conditions are associated with a legitimate need for the information not to be released publicly, before a certain time, used out of context or used for a different purpose than that undertaken by the particular requester.

Conditions often take the form of:

- embargoes;
- an agreement to keep the information confidential;
- a commitment not to use the information without reference to a contextual statement the agency may have provided;
- a commitment to use the information only for a specific purpose.

It is important to note that conditions are not enforceable under the LGOIMA. Release of the information subject to a condition is therefore reliant on the trust between the local authority and the requester or the establishment of a formal contract.

NB If the requester considers a condition imposed by a local authority to be unreasonable, they can ask the Ombudsman to investigate and review the condition.

Releasing personal information to corporate or unincorporated bodies

Decisions on requests for personal information about individuals are made under the Privacy Act. However, decisions on requests for personal information about a corporate sole or a body (that is either corporated or unincorporated) must be made under Part 4 of the LGOIMA. The LGOIMA requires that the local authority adopt appropriate procedures to ensure that any personal information about such bodies being released to it is received:

- only by that body; or
- by an agent of that body who:
 - has the written authority of the body; or
 - is otherwise properly authorised by that body to obtain the information.

A local authority must include in its response, advice that the person has a right to request the correction of the information at issue if it is believed to be inaccurate or incomplete and gives a misleading impression.

Withholding information (including deletions)

A local authority may decide to withhold information falling within the scope of the request, or otherwise refuse a request, only for the reasons set out in the LGOIMA and only if they are available for the local authority to rely on when making a decision under the relevant part of the Act. These reasons are:

- Section 6 – conclusive reasons
- Section 7 – other reasons or “good reasons”
- Section 8 – confirming the existence or non-existence of information
- Section 17 - administrative reasons
- Section 26 – reasons for refusing personal information under Part 4 of LGOIMA

Making deletions

To delete information within a document before photocopying a local authority has a number of options available to it:

- white the information out;
- cut the information out; or
- delete the information electronically.

It is not recommended that a new document is created with the original information deleted or electronic spacing omitted as it is important that both the requester, and an Ombudsman on review, is able to assess the information that was deleted in its original context. The exception to this is if a local authority has decided to release the information by way of summary.

Advising the requester of the decision to withhold information (including deletions)

If a local authority’s decision is to withhold the requested information, it must advise the requester that the information they requested is being withheld and give:

- the reasons for the refusal;
- if requested, the grounds for withholding the information relied on in LGOIMA; and
- information about their right to seek an investigation and review of the local authority’s refusal by way of a complaint to an Ombudsman.

Grounds for refusing a request for official information

Section 6: Conclusive reasons

Section 6(a) – release would be likely to **prejudice the maintenance of the law**, including the prevention, investigation and detection of offences and the right to a fair trial.

Section 6(b) – release would be likely to **endanger the safety of a person**.

Section 7: Other reasons¹

There is a two stage test before section 7 will provide good reason to withhold information

1. Disclosure must **cause a harm** to an interest that is protected in section 7(2) (see below)

and
2. the need to withhold the information **must not be outweighed** by the public interest in favour of release – section 7(1)

Section 7(2)(a) – withholding the information is necessary to protect the **privacy** of natural persons.

Section 7(2)(b)(i) – release would disclose a **trade secret**.

Section 7(2)(b)(ii) – release would be likely to unreasonably prejudice the **commercial position** of a person who supplied or is the subject of the information.

Section 7(2)(ba)(i) – in the case of an application for a resource consent or water conservation order, or a requirement for a designation or heritage order, withholding the information is necessary to avoid **serious offence to tikanga Maori** or to avoid the disclosure of the **location of waahi tapu**.

¹ NB These grounds only provide good reason to withhold if they are not outweighed by any public interest considerations favouring disclosure

Section 7(2)(c)(i) – the information requested is subject to an **obligation of confidence or a person was legally compelled to provide** the information, and release would be likely to **prejudice the supply** of similar information or information from the same source, and it is in the public interest that the information **should continue to be supplied**.

Section 7(2)(c)(ii) – the information requested is subject to an **obligation of confidence or a person was legally compelled to provide** the information, and release would be likely to otherwise **damage the public interest**.

Section 7(2)(d) – release would prejudice measures protecting the **health or safety of members of the public**.

Section 7(2)(e) – release would prejudice measures preventing or mitigating material loss to the public.

Section 7(2)(f)(i) – withholding is necessary to maintain the effective conduct of public affairs through the **free and frank expression of opinions** by, between or to members, officers or employees of a local authority in the course of their duty.

Section 7(2)(f)(ii) – withholding is necessary to maintain the effective conduct of public affairs through the protection of members, officers or employees of a local authority from **improper pressure or harassment**.

Section 7(2)(g) – withholding is necessary to **maintain legal professional privilege**.

Section 7(2)(h) – withholding is necessary to enable a local authority holding the information to **carry out commercial activities** without prejudice or disadvantage.

Section 7(2)(i) – withholding is necessary to enable a local authority holding the information to **carry on negotiations** (including commercial and industrial negotiations) without prejudice or disadvantage.

Section 7(2)(j) – withholding is necessary to prevent the disclosure or use of official information for **improper gain or improper advantage**.

Section 8: Confirming the existence or non-existence of certain information

Section 8 – if a request relates to information to which section 6 or section 7(2)(b) of LGOIMA applies (or would, if it existed, apply) and if the local authority is satisfied that the interest is likely to be prejudiced by disclosure of the existence or non-existence of the information.

Section 17: Administrative reasons for refusal

Section 17(a) – one of the grounds in section 6 or 7 apply.

Section 17(b) – the agency **neither confirms nor denies** the existence or non-existence of the information requested.

Section 17(c)(i) – releasing the information requested would be **contrary to the provision of a specified enactment**.

Section 17(c)(ii) – releasing the information requested would constitute **contempt** of Court or the House of Representatives.

Section 17(d) – the information requested is, or **will soon be, publicly available**.

Section 17(e) – the document alleged to contain the information requested **does not exist or cannot be found**.

Section 17(f) – the information requested cannot be made available without **substantial collation or research**.

Section 17(g) – the information requested is **not held** by the agency and the person dealing with the request has no grounds for believing that it is held by, or is more closely connected with the functions of, any local authority, Department, Minister, or organisation.

Section 17(h) – the request is **frivolous or vexatious**.

Section 17(h) – the information requested is **trivial**.

Section 26: Reasons for refusal of requests for personal information

Section 26(1)(a) – disclosure would be likely to prejudice an interest protected by section 7(2)(b) and there is no countervailing public interest; or would be likely to prejudice an interest protected by section 6.

Section 26(1)(b) – disclosure would involve the **unwarranted disclosure of the affairs of another** person or of a deceased person.

Section 26(1)(c) – disclosure of the information (or of the person who supplied it), being evaluative material, would **breach an express or implied promise** made to the supplier that the information (and/or their identity) would be held in confidence.

Section 26(1)(g) – disclosure of the information would **breach legal professional privilege**.

Section 26(1)(h) – the request is **frivolous or vexatious** or the information requested is **trivial**.

Checklist for Processing Requests

1-3 working days after the day the request was received by the local authority

1. Register the request and note the date of receipt:
 - check for similar requests.
2. Confirm which Act, if any, applies (OIA, LGOIMA or Privacy Act):
 - consult if necessary
 - is it a s21 LGOIMA request for internal rules, policies etc?
 - is it a s22 LGOIMA request for reasons for a decision?
 - is it a Part 4 request by a corporate sole or body corporate or unincorporated for access to personal information?
3. Calculate and record relevant maximum time limits for:
 - transfer;
 - extending the maximum time limits; and
 - final decision
4. Send letter to requester acknowledging date of receipt

As soon as reasonably practicable and before the maximum time limit has expired

5. Assess the request for clarity and specificity:
 - consult the requester if necessary
6. Determine what information is held by the local authority that is covered by the request:
 - is transfer necessary?
 - is an extension of time necessary?
7. If necessary, send letter to requester:
 - advising of the decision to transfer the request;
 - advising of decision to extend maximum time limit for either the transfer or the final decision (which complies with section 14(4) of LGOIMA).
8. Assemble the information:
 - if there are any administrative difficulties, consider whether section 17 of LGOIMA applies, or whether charging or extension of the time limit is necessary.
9. Assess the information, with reference to the principle of availability in section 5 of LGOIMA.

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10. Identify any concerns you may have with release of the requested information.
- Analyse any concerns with reference to the reasons for refusal that are relevant to the part of the LGOIMA the request is being considered under:
 - i. if necessary, consult other parties for their views on the likely effect of disclosure;
 - ii. consider extending the timeframe if necessary.
 - If any grounds in section 7 of LGOIMA are being considered, identify and assess the effect of any public interest factors that favour release of the requested information.
11. Make a decision on the request:
- if it is to release some or all of the information subject to a charge, advise the requester before proceeding to step 12.²
12. Where relevant, prepare the information for release.³
13. Advise the requester of your agency's decision:
- ensure notification of the decision complies with the requirements in the part of the LGOIMA the request was considered under.
14. Keep a record of the final decision, including why it was made and what information was released and/or withheld.

² If a decision is made to charge, the requester should be given the opportunity to review/refine the request and/or complain to an Ombudsman about the reasonableness of the charge before the information is prepared for release.

³ If necessary, the information can be prepared for release **after** the decision has been made and communicated to the requester – as long as it is provided **“without undue delay”**.

Avoiding complaints about delay

A number of reasons are commonly provided to the Ombudsman to explain why there has been a delay in responding to a request. Many of these reasons could have been addressed by using mechanisms contained within the LGOIMA. We have listed some of the reasons that are frequently given and we have identified some of the mechanisms or techniques that may assist in managing these situations. In all cases, local authorities are encouraged to refer to the LGOIMA and the Ombudsman's Practice Guidelines to ensure the option they use is appropriate in their circumstances and is executed in accordance with the legislation.

“Broad requests”

A local authority's options include:

- identifying which aspect of the request is causing concern, then contacting the requester and explaining the problem to them (including how much information their request covers as currently phrased) and inviting them to clarify or refine their request (and suggest how);
- considering whether charging for the supply of information would be reasonable in the circumstances;
- considering releasing the information in an alternative form that meets the requester's needs e.g. summary, viewing, oral briefing;
- considering whether, in the circumstances of the case, it would be reasonable for the agency to exercise its discretion to refuse the request on the basis that the official information cannot be made available without substantial collation or research.

“Multiple requests within a short timeframe”

A local authority's options include:

- engaging more staff to assist;
- contacting the requester, explaining the problem and inviting the requester to prioritise the requests;
- considering extending the time limit on individual requests if needed, to give the local authority more time to respond substantively;
- advising the requester of the decisions on the individual requests *“as soon as reasonably practicable”* after they have been made, and subsequently rolling out information to be released *without undue delay*;
- considering releasing the information in an alternative form that is acceptable to the requester e.g. summary, viewing, oral briefing;

- considering also releasing the information on the local authority’s website (if the requests are for the same information from multiple parties). In this case the requesters must be advised of the release *at least* at the same time as it appears on the website;
- considering whether, in the circumstances of the case, the multiple requests can be treated as a single request for the purposes of deciding whether it is appropriate to refuse the request on the ground that making the information available would require substantial collation and research;
- considering whether it may be appropriate to refuse the requests on the ground that the *requests* (not the requester) are frivolous or vexatious.

“The information requested is difficult to identify / cannot be found”

A local authority’s options include:

- reviewing the request carefully to identify what information is actually being sought;
- contacting the requester to explain the problem and to ask whether the request can be made more specific;
- if the information requested relates to discussions that were held but not recorded, finding officials who remember what was said and asking them to write it down;
- considering whether to transfer part or all of the request to another agency subject to New Zealand’s official information legislation who does hold the information is required;
- considering extending the time limit to give the local authority more time to locate the information;
- considering whether refusal is appropriate on the ground that the document alleged to contain the requested information does not exist or cannot be found;
- considering whether refusal is appropriate on the basis that the local authority does not hold the information being requested and has no grounds for believing that the request should be transferred to another agency subject to New Zealand’s official information legislation;
- considering whether the local authority is being asked to create information or express an opinion rather than supply information that it holds.

“We have to consult / get sign-off before the decision can be provided to the requester”

Local authorities may have to engage in consultations before a decision can be made on official information requests. Consultations may be held with:

- external third parties who originally provided the requested information to the local authority or who are the subjects of the information (as to whether they have any concerns with its disclosure, for example, in relation to privacy or understandings of confidentiality);
- any local authorities who were involved in the creation of the information as part of a collaborative process (to seek their views before a decision is made on a request);
- a local authority's in-house policy or legal team, chief executive or Minister for their comments on the proposed response.

NB: Any consultations must be *necessary* for a local authority to make a proper decision on the request. If there are unnecessary consultations and sign-offs taking place, this could give rise to a complaint that a local authority has developed a process which prevents a decision being made "*as soon as reasonably practicable*".

To avoid breaching its legal timeframe obligations under the LGOIMA while such consultations are in train, a local authority's options include:

- extending the maximum time limit for responding to the request;
- considering whether it should transfer part or all of the request to another agency which is subject to the official information legislation on the basis that some or all of the requested information is more closely connected with their functions;
- considering speaking to the requester to explain the need to consult with third parties. Although not obliged to, the requester may be able to clarify why the information is being requested. This often helps to expedite the consultation process. Equally, the requester may be able to narrow or limit the request so that any consultation may no longer be necessary;
- considering whether the local authority needs to consult with third parties in respect of all of the information requested or whether the requester can be advised of the decision on the request in respect of some of the information while consultations on the remaining information are under way.

Tips for consulting third parties

An efficient and effective consultation should include:

- sufficient relevant background information about the request;
- the identity of the requester (unless there is specific good reason not to provide this);
 - good administrative practice is to advise the requester of the intended consultation first to check that there are no genuine concerns about disclosure of the requester's identity. If the requester wishes to retain anonymity, the agency should consider whether there is a reasonable basis for non disclosure given that the identity of the requester may often be a relevant factor for a third party in identifying any concerns with release of the information requested;
- a brief description of the information held by the local authority which is captured by the request and on which it is seeking the third party's comments;
- advice about the local authority's obligations under the LGOIMA for responding to the request for this information including that:
 - the local authority must follow the principle of availability set out in the Act;
 - it is for the local authority to assess whether there is "good reason" for withholding";
 - third parties can expect their concerns to be taken into account, but they cannot veto disclosure;
 - lack of consent is not, in itself, a reason for refusal under the LGOIMA.
- request for confirmation as to whether the third party has any concerns with release and if so, a detailed explanation of these and the basis for them;
- A due date for response to enable the local authority to make a timely substantive decision on the request.

"We're not ready to release the information yet"

This could cover a number of situations including:

- where the local authority is intending to make the information publicly available shortly but is not quite ready to do so (for example, the information is being printed or is in the final stages of being approved and finalised for release). In this case, a local authority may refuse a request on the basis that *"the information requested is or will soon be publicly available"*. However, it would be helpful to explain to the requester:
 - where and how the information will be able to be obtained;

- the specific date of public release; and
- the perceived difficulty in meeting the request now.
- where the local authority has a substantive concern about making the information available at that particular time. In this situation, the local authority will need to decide whether the LGOIMA provides good reason to withhold it. Unless there is good reason under the legislation to withhold the information, it should be disclosed to the requester without delay.

“The issue is complex and we’re not sure of the answer”

A local authority should first consider whether it actually has all the information it needs to identify accurately any prejudice that could result from disclosure that is protected by a ground in the LGOIMA. To assist in making its decisions, a local authority’s options include:

- consulting with relevant third parties for their views on disclosure (and extending the maximum time period for responding if necessary to allow this to take place);
- assessing whether some or all of the information requested is more closely connected with the functions of another agency subject to the official information legislation. If so, those particular parts of the request should be transferred to that other agency within the 10 working day time limit (unless appropriately extended);
- consulting the local authority’s in-house policy or legal team, senior management, chief executive or Minister to ascertain whether they have any concerns about release of the information (and extending the maximum time period for responding if necessary to allow these consultations to take place);
- obtaining external legal advice where appropriate;
- checking the Ombudsman website: (www.ombudsman.parliament.nz). On the website you will find:
 - Practice Guidelines (which explain how the various sections of the official information legislation work); and
 - Case notes (which provide summaries of past cases and are searchable by subject or by reference to the relevant section in the legislation)
 - Opinions (which details an Ombudsman’s investigation and view on a particular complaint made to them)
- Calling the Office of the Ombudsman. While the local authority’s obligation is to make its own decision on a request, the Ombudsmen are able to provide guidance on the current operation and interpretation of the official information legislation and how the LGOIMA has been applied in similar situations in the past.

Frequently asked questions

The Ombudsman regularly receives enquiries from local authorities about processing official information requests under LGOIMA. Below are the most frequently asked questions we receive.

I can't meet the extended deadline for response. Can I extend again?

Yes, there's nothing in the Act that says you can't extend more than once. However, any extension must be made within the original 20 working day period of receiving the request. This is because section 14(3) of the LGOIMA says *"the extension shall be effected by giving or posting notice of the extension to the person who made the request within 20 working days after the day on which the request is received"*.

Having said that, multiple extensions are likely to irritate requesters, and may create an impression that the local authority doesn't really know what it's doing. Remember that the extension is for the maximum time frame within which you expect to be able to respond. It may be better to extend once, for a realistic period of time, and indicate that the local authority will endeavour to respond to the request sooner if possible.

If it's looking like you won't make an extended deadline, consider contacting the requester by phone or email to let them know the current state of play and reasons for the hold-up. Requesters will appreciate being kept informed, and may be more understanding if the local authority ends up in breach of the timeframe requirements. Also consider whether it's possible to make a staged reply. If most of a response is straightforward and ready to go, there is often no need to hold that up in order to deal with a few remaining issues.

Can I still transfer a request for official information if I'm outside the 10 working days specified in section 12?

Under the LGOIMA, transfers of requests must be made *"promptly, and in no case later than 10 working days after the day on which the request is received"*. The legislation is pretty clear – the need to transfer a request is something the agency should be looking to identify and action as early as possible. If you transfer a request outside the 10 working day period, this could potentially be the subject of an Ombudsmen Act complaint, and the likely finding would be that you have acted *"contrary to law"*.

However, that doesn't mean the transfer will be invalid. Even if it is made out of time, it will still have the desired effect of shifting the responsibility for reaching a decision on the request to the most appropriate agency. That is, after all, what the transfer provision is about – ensuring that the agency that holds the information, or that is best placed to know whether there are valid concerns about disclosure, ends up deciding on the request.

If you identify the need to transfer a request in whole or part outside the 10 working days, consider contacting the requester by phone or email to explain the reason for the delay and the need for the transfer. Requesters will appreciate being kept informed, and may be more understanding if the local authority ends up in breach of the timeframe requirements.

I've received a request by email outside business hours. When does the working day count start?

The 20 working day count always starts the day after a request is received. "Working day" means any day of the week excluding weekends, specified holidays, and the period between 25 December and 15 January. The Act doesn't say anything about a working day being 9am-5pm. Requests by post will only be received during normal business hours, but requests by email can be received at any time.

The Electronic Transactions Act 2002 tells us when an email request is taken to have been received:

11 Time of receipt

An electronic communication is taken to be received,—

- a. in the case of an addressee who has designated an information system for the purpose of receiving electronic communications, at the time the electronic communication enters that information system; or*
- b. in any other case, at the time the electronic communication comes to the attention of the addressee.*

In most cases then, an email is received at the time it enters the designated information system – whether or not that's outside business hours. So when an email request is received outside business hours, as long as it is received before midnight then it is to be treated as having been received on that day, and the working day count will start the next day e.g:

- An email request is received at 5.01pm on Monday – the working day count starts on Tuesday.
- An email request is received at 12.01am on Tuesday – the working day count starts on Wednesday.
- An email request is received at 7.30pm on Friday – the working day count starts the following Monday.

Use the response calculator on the home page of the Ombudsman's website to help you calculate working day counts.

I'm in the process of consulting the requester. How does this affect the timeframe requirements?

This really depends on the purpose and outcome of the consultation (see below).

Purpose of the consultation: due particularity

Section 10 of LGOIMA says that *“the official information requested shall be specified with due particularity in the request”*. If the purpose of the consultation is because the requester hasn't specified the information requested with “due particularity”, then a valid request hasn't yet been received, and the timeframe requirements will not apply. Remember, all “due particularity” means is that the requested information must be able to be identified by a reasonably experienced officer of the local authority. It's not a reason for declining a request for lots of information, if that information can reasonably be identified.

Purpose of the consultation: broad requests / information doesn't exist or can't be found

Section 17B LGOIMA imposes a duty on local authorities to consider consulting a requester if the request is likely to be refused on the grounds of substantial collation or research, or because the information doesn't exist or can't be found. If that's the purpose of your consultation with the requester, then it doesn't alter the fact that a valid request has been received, and the local authority is obliged to make and communicate its decision on that request within 20 working days. The working day count will continue notwithstanding any delay caused by consulting the requester. Local authorities should be aware of this, and if the 20 working day mark is approaching, consideration should be given to either:

- extending the timeframe for response because of consultation required; or
- communicating a decision on the request as it was originally made.

If the consultation hasn't yet resulted in a workable refinement or clarification of the original request, then the likely decision will be a refusal on the relevant grounds (section 17(e) or (f) of the LGOIMA). Local authorities can still refer to the fact that consultation with the requester is ongoing, and note that the purpose of the consultation is to assist the requester to make the request in a form that would remove the reason for refusal.

Outcome of the consultation

The outcome of the consultation can also affect the timeframe requirements.

Consultation may result in a refinement of the original request – meaning the request is for a subset of the information originally requested. In that case, the original working day count will still apply, and if that's fast approaching, local authorities will need to consider extending.

Consultation may also result in a new request – i.e. the information requested is substantially or materially different to that which was specified in the original request. If consultation results in a new request, the working day count will start afresh the day after that request was received.

The requester has asked for an urgent response. How does this affect the timeframe requirements?

Section 10(3) of LGOIMA states “if the person making the request asks that his request be treated as urgent, he shall give his reasons for seeking the information urgently”. This means that urgent requests can be made, and if they are, the requester must give their reasons for seeking urgency.

Notwithstanding a request for urgency, the local authority’s legal obligations remain the same:

- to make and communicate the decision on a request for official information as soon as reasonably practicable and within 20 working days (see section 14(1) LGOIMA); and
- to release any official information requested without “undue delay” (see section 27(5) LGOIMA).

However, local authorities must still provide a reasonable response to a request for urgency. An unreasonable response may be the subject of an Ombudsmen Act complaint.

Providing a reasonable response to a request for urgency may involve:

- Assessing the requester’s reasons for seeking urgency (do they merit the request being accorded priority over other work, including other official information requests?)
- Deciding whether to accord urgency to the request.
- Advising the requester of this decision, and (if applicable) providing an indicative timeframe for response.

Local authorities could consider discussing the urgent request with the requester. This may enable:

- Local authorities to clarify the competing priorities that would need to be sidelined in order to accord urgency to the request.
- Requesters to clarify the reasons for urgency, in light of these competing priorities.
- Requesters to clarify the intended scope of their request, or to prioritise particular information, allowing certain information to be made available sooner rather than later.

Note that the legislation makes it clear that charges may be imposed to cover the costs incurred pursuant to a request to make information available urgently (section 13(3) LGOIMA).

I’ve received a request from fyi.org.nz. How do I know the requester is eligible?

Agencies may receive requests via a website called fyi.org.nz. There’s no reason why official information requests cannot be made in this way, but one question agencies have asked is how to know whether a requester is eligible.

Eligibility is an issue that only arises under the OIA, because section 12(1) provides that requests can only be made by New Zealand citizens, permanent residents, people in New Zealand, and bodies corporate that are incorporated or have a place of business in New Zealand. The same restrictions don't apply under the LGOIMA.

Agencies are entitled to make reasonable enquiries to satisfy themselves that a person is eligible to make a request under the OIA. This can be complicated in the context of a request via fyi.org.nz because all your communications with the requester will be published online, and a requester may not want to reveal those kinds of details publicly.

Agencies that want to query eligibility should do so promptly so they don't unnecessarily delay the proper processing of a valid request. The best way to do this may be to reply to the requester (preferably at the same time as the request is acknowledged), explaining the eligibility requirements, and providing the name and contact details of a staff member the requester can contact privately in order to provide the assurance required regarding eligibility.

Alternatively, the agency may decide it doesn't really matter whether the requester is eligible or not, because they'd be perfectly happy to supply the information to any person regardless of eligibility.

Do I have to make the decision on a request and release the information at the same time?

No. Your legal obligations are to:

- make and communicate the decision on a request for official information as soon as reasonably practicable and within 20 working days (see section 14(1) LGOIMA); and
- release any official information requested without "undue delay" (see section 27(5) LGOIMA).

Often these steps are done in conjunction, but there's no requirement for that to be the case. Doing them separately can be a helpful way of managing large requests.

For instance, a local authority may know that it intends to grant a request subject to some redactions under section 7(2)(a), but the process of preparing the material for release will take a bit longer. The local authority can advise the requester of its decision on the request within the original 20 working days, and give an indication of when it will be in a position to release the information requested. The agency's decision must still comply with section 18 of the LGOIMA. But so long as there's no "undue" delay in releasing the information, there will be no breach of the legislation.

Making a complaint

Under the LGOIMA and OA, an Ombudsman can investigate:

- decisions to withhold information or to delete information from documents released to you;
- delays or extensions to the time limits for responding to requests;
- decisions to transfer a request;
- charges for supplying information;
- the way in which information has been made available;
- release of information subject to conditions;
- the response to a request for a statement of reasons for a decision or recommendation affecting the requester;
- the response to a request for access to policies, rules and guidelines;
- the response to requests for access to personal information under Part 4 of LGOIMA.

How to make a complaint

There is no charge for making a complaint to an Ombudsman. All investigations are conducted in private. If you wish to make a complaint to an Ombudsman, you can do so by:

- letter, fax or email (addressed to info@ombudsman.parliament.nz); or
- by using an online complaint form available at www.ombudsman.parliament.nz.

When making a complaint, it would be helpful if you advised the Ombudsman of:

- **what** you requested
- **when** you made the request
- **who** you made your request to
- **what** you are dissatisfied about and want investigated

It would also be useful if you could provide:

- a copy of your letter of request or details of your verbal request; and
- any correspondence you have had with the local authority
- a copy of the local authority's reply to your request.

What happens when you make a complaint

Your complaint will be acknowledged promptly and you will be kept informed throughout the investigation. An Ombudsman will seek the local authority's response to your complaint and an explanation for why it took the actions it did at the time. If information has been withheld, an Ombudsman will usually view that information.

The Ombudsman investigation process is an inquisitorial one, focused on understanding what happened and why at the time the request was received and considered by the local authority. There is a legal requirement that all investigations are conducted in private and all Ombudsmen staff are required to take an oath of secrecy. This is to ensure that an atmosphere of candour exists between the parties involved so the Ombudsman can find out exactly what happened and why.

Local authorities are expected to provide material to the Ombudsman to support their actions and decisions. The Ombudsman can:

- require information and documents to be produced on demand
- summon people and examine them on oath
- exercise a power of entry onto a local authority's premises

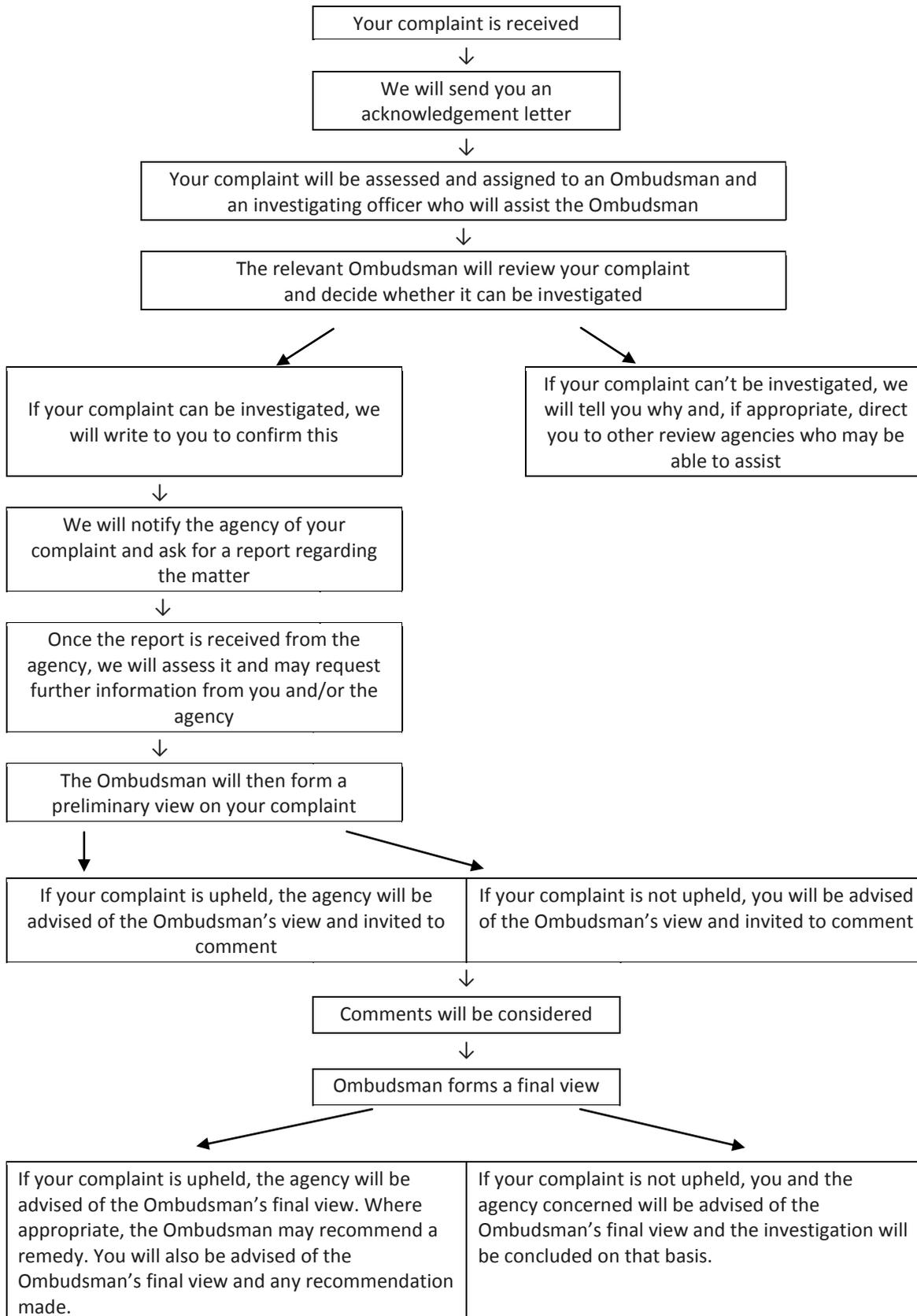
If an Ombudsman decides that your complaint cannot be upheld, you will have an opportunity to respond before a final decision is made. If an Ombudsman decides that your complaint is justified, the local authority will be advised of the view and invited to provide further comments before a final decision is made.

If an Ombudsman forms the view that information should not be withheld, it is not the Ombudsman who releases the information. In such cases, the Ombudsman will recommend that the local authority release the information to you. An Ombudsman's recommendation becomes binding on the local authority 21 working days after it has been made, unless a resolution directing otherwise is made at a meeting of that local authority.

Where a resolution by a local government authority is issued, the requester may apply to the High Court for a review of the resolution. An Ombudsman does not usually have any involvement in a requester's application for judicial review. However, an Ombudsman does have the ability to report an organisation to Parliament if it does not comply with a recommendation.

In some cases, the local authority concerned may decide to release the information at issue during the course of an Ombudsman's investigation. If this happens, the investigation will usually be discontinued on the basis that the complaint has been resolved.

How your complaint is processed



Resources available

The Office of the Ombudsman has a number of resources to assist local authorities and requesters using the LGOIMA:

- visit the Ombudsman's website: www.ombudsman.parliament.nz, where you can access:
 - working day calculator;
 - Official Information Practice Guidelines;
 - case notes;
 - opinions
 - *Ombudsmen Quarterly Review* newsletter;
 - annual reports;
- call us on free-phone: 0800 802 602.

